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THE
PRACTICE
OF THE
Office of Sheriff
AND
UNDER-SHERIFF;

SHEWING

THE POWERS AND DUTIES OF THOSE
OFFICES.

THE MANNER OF APPOINTING THE
HIGH SHERIFF, UNDER-SHERIFF,
AND THEIR DEPUTIES.

THE ELECTIONS OF THE SHERIFFS
OF LONDON AND MIDDLESEX,
WITH THE BYE-LAWS OF THE
CITY RELATING THERETO.

THE NATURE OF ACTIONS BY AND
AGAINST SHERIFFS.

INCLUDING

THE MODERN DETERMINATIONS, AND PRECEDENTS
OF RETURNS TO WRITS, &c.

ALSO, OF THE

Office of Coroner ;

THE MODE OF HIS APPOINTMENT, THE POWERS AND DUTIES OF TAKING
INQUISITIONS, AND MODE OF HOLDING COURTS, &c.

TO WHICH ARE ADDED

COPIOUS APPENDIXES OF USEFUL PRECEDENTS.

BY JOHN IMPEY,

AUTHOR OF THE PRACTICE OF THE COURTS OF KING'S BENCH AND
COMMON PLEAS, AND OF THE MODERN PLEADER.

*Sixth Edition, newly Arranged and Corrected, with Reference to the
Modern Cases and Recent Statutes,*

BY H. JEREMY, BARRISTER.

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TO THE

SIXTH EDITION.

THE previous Editions of Mr. Impey's valuable Work having, from the continual increase of modern decisions and statutory alterations of the law, extended the original Work to an inconvenient bulk, and the additions to it, by being introduced in the shape of notes, having in some degree disconnected the points, and rendered the Work of less easy reference, it has been thought advisable, in preparing the present Edition, to blend the notes and additional authorities with the original text, and to present, as nearly as may be, at one view, the entire body of law upon each particular subject. The reference to the cases being also withdrawn from the text, will, it is thought, less distract the attention of the reader. In other respects the Editor has endeavoured carefully to notice every recent alteration, and insert every modern decision, and trusts that in so far as he has ventured to alter the former arrangement of the Work, it will not be found in any way less practically useful.

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THE
PRACTICE
OF THE
OFFICE OF SHERIFF.

Of the Division of England into Counties.

THE civil division of *England* is into counties, of those counties into hundreds, of those hundreds into tithings or towns. Which division, as it now stands, seems to owe its original to King *Alfred* (*a*); who, to prevent the rapines and disorders which formerly prevailed in the realm, instituted tithings; so 'called from the *Saxon*, because ten freeholders, with their families, composed one. These all dwelt together, and were sureties or free pledges, to the king, for the good behaviour of each other, and if any offence was committed in their district, they were bound to have the offender forthcoming (*b*). And therefore, anciently, no man was suffered to abide in *England* above forty days, unless he were inrolled in some tithing or decennary (*c*). One of the principal inhabitants of the tithing being annually appointed to preside over the rest, called the tithingman, the headborough, and in some counties the borsholder, or boroughsealder, being supposed the discreetest man in the borough, town, or tithing (*d*).

Civil division of *England* into counties, which owes its origin to *Alfred*, who instituted tithings.

Tithingman the discreetest man in the town, &c.

Signification of tithings, &c.

Tithings, *towns*, or *vills*, are of the same signification in law, and are said to have had, each of them, originally, a church, and celebration of divine service, sacraments

(*a*) Camd. 156.
(*b*) Flet. 1. 47.

(*c*) Mirr. c. 1. s. 2.
(*d*) Finch. L. 8.

Town or vill, definition of.	and burials (<i>e</i>). Though that seems to be rather an ecclesiastical than a civil distinction. The word <i>town</i> , or <i>vill</i> , is indeed, by the alteration of time and language, now become a general term, comprehending under it the several species of cities, boroughs, and common towns.
City.	A city is a town incorporated, which is or hath been the see of a bishop: and though the bishopric be dissolved, as at <i>Westminster</i> , yet still it remaineth a city (<i>f</i>). A
Borough.	borough is now understood to be a town, either corporate or not, that sendeth burgesses to Parliament. Other towns there are, to the number, Sir <i>Ed. Coke</i> says, of 8,803, which are neither cities nor boroughs. Some of which have the privileges of markets, and others not, but both are equally towns in law. To several of these towns
Hamlets.	there are small appendages belonging, called <i>hamlets</i> ;
14 E. 1.	which are taken notice of in the statute of <i>Exeter</i> ; which makes frequent mention of entire-vills, demi-vills, and
Entire vills.	hamlets. Entire vills, <i>Spelman</i> conjectures (<i>g</i>) to have
Demi-vills.	consisted of ten freemen, or frank-pledges; demi-vills of five, and hamlets of less than five. These little collec-
These towns contained but one parish, and one tithing, but now divided into several.	tions of houses are sometimes under the same adminis- tration as the town itself, sometimes governed by sepa- rate officers; in which last case they are, to some purposes in law, looked upon as distinct townships. These towns, as was before hinted, contained each originally but one parish, and one tithing; though many of them now, by the increase of the inhabitants, are divided into several parishes and tithings, and sometimes, where there is but one parish, there are two or more vills or tithings.
Hundred, what;	As ten families of freeholders made up a town or tith-
governed by a high constable.	ing, so ten tithings composed a superior division, called a hundred, as consisting of ten times ten families. The hundred is governed by a high constable or bailiff, and formerly there was regularly held in it the hundred court for the trial of causes, though now fallen into disuse. In
Hundreds called wapentakes.	some of the more northern counties these hundreds are called wapentakes (<i>h</i>).
Subdivisions of hundreds intro- duced by <i>Alfred</i> .	The subdivision of hundreds into tithings seems to be most peculiarly the invention of <i>Alfred</i> : the institution of hundreds themselves he rather introduced than inven- ted; for they seem to have obtained in <i>Denmark</i> (<i>i</i>);

(*e*) 1 Inst. 115.(*f*) Co. Litt. 109. 116. 164.(*g*) Gloss. 274.(*h*) Seld. in Fortes. c. 24.(*i*) Seld. tit. Hon. 2. 3. 5.

and we find that in *France* a regulation of this sort was made above two hundred years before; set on foot by *Clotharius* and *Childebert*, with a view of obliging each district to answer for the robberies committed in its own division. These divisions were, in that country, as well military as civil; and each contained a hundred freemen, who were subject to an officer called the *centenarius*, who, in the middle age, was an officer that had the government or command, with the administration of justice, in a village or division, containing a hundred freemen; a number of which *centenarii* were under the jurisdiction and command of a superior officer called the count, or *comes* (*k*).

Centenarius was an officer who had the government of a village containing 100 freemen.

A number of which *Centenarii* were under the command of the count.

Shire and county, of what composed and whence derived.

How governed.

Lathes and rapes.

Trithings still subsist in York-shire.
Number of counties.

Were divided for the better administration of justice.

An indefinite number of these hundreds make up a county or shire. *Shire* is a *Saxon* word, signifying a division; but a county, *comitatus*, is plainly derived from *comes*, the count of the *Franks*; that is, the earl or alderman (as the *Saxons* called him) of the *shire*, to whom the government of it was intrusted. This he usually exercised by his deputy, still called, in *Latin*, *vice-comes*, and in *English*, the sheriff, shrieve, or shire-reeve, signifying the officer of the shire; upon whom, by process of time, the civil administration of it is now totally devolved. In some counties there is an intermediate division between the shires and the hundreds, as lathes in *Kent*, and rapes in *Sussex*, each of them containing about three or four hundreds a piece. These had formerly their lathe-reeves and rape-reeves, acting in subordination to the shire-reeve. Where a county is divided into three of those intermediate jurisdictions, they are called trithings (*l*), which were anciently governed by a trithing-reeve. These trithings still subsist in the county of *York*, where, by an easy corruption, they are denominated ridings; the north, the east, and the west ridings. The number of counties in *England* and *Wales* has been different at different times: at present there are *forty* in *England* and *twelve* in *Wales* (*m*).

The reason why those counties were divided seems to be, for the better government and more easy administration of justice: and for the better execution of the laws in the several counties, sheriffs are appointed; and, by *Dalton*, there is no part of the kingdom that lieth not in some county. Of these fifty-two counties, there are

(*k*) Mont. Sp. L. 17. 30.

(*m*) 5 Co. 109. b.

(*l*) Ll. of Edw. Conf. c. 34.

Counties palatine, three.

three of special note, *Chester*, *Durham*, and *Lancaster*, which are therefore termed *counties palatine*. The two former are such by prescription or immemorial custom, or at least as old as the *Norman* conquest (*n*); the latter was created by *Ed. 3*, in favour of *Henry Plantagenet*, then duke of *Lancaster* (*o*).

Chief governors heretofore sent out all writs in their name.

The chief governors of these counties palatine, heretofore, by a special charter from the king, sent out all writs in their own names; and, touching justice, did all things as absolutely as the king himself in other counties; only acknowledging him their superior and governor; whence palatine, *a palatio*, because the owners of them had *jura regalia* as fully as the king hath in his palace. These palatine privileges were probably granted, to the counties of *Chester* and *Durham*, because they bordered on enemies countries, *Wales* and *Scotland*, in order that the owners, being encouraged by so large an authority, might be the more watchful in its defence, and that the inhabitants, having justice administered at home, might not be obliged to go out of the county, and leave it open to the enemies incursions; and upon this account also there were formerly two other counties palatine, *Pembrokeshire* and *Hexamshire*, the latter was united with *Northumberland*; but these were abolished by Parliament; the former in 27 *H. 8.* the latter in 14 *El.* Likewise their power was much abridged, the reason for their continuance in a manner ceasing; though still all writs are witnessed in their names, and all forfeitures for treason by the common law accrue to them; of these three, the county of *Durham* is now the only one remaining in the hands of a subject (*p*).

Why privilege granted.

Power abridged by *H. 8.*

Isle of Ely royal franchise.

The *Isle of Ely* is not a county palatine, but only a royal franchise: the bishop having, by grant of King *Henry* the first, *jura regalia* within the *Isle of Ely*; whereby he exercises a jurisdiction over all causes as well criminal as civil (*q*).

Counties corporate.

There are also counties *corporate*; which are certain cities and towns, some with more, some with less territory annexed to them; to which, out of special grace and favour, the kings of *England* have granted to be counties of themselves, and not to be comprised in any other county, but to be governed by their own *sheriffs*, and other magistrates,

(*n*) Seld. tit. Hon. 2. 5. 8.
(*o*) 4 Inst. 204.

(*p*) 4 Inst. 205. 1 Vent. 155. 157.
(*q*) 4 Inst. 220.

so that no officers of the county at large have any power to intermeddle therein. Such are *London, York, Bristol*, and many others.

Of the *Name* and *Antiquity* of the *Sheriff*.

IT appears from several authorities, that long before the time of the *Romans*, the sheriff was the deputy of the *consul*, and called *vice-consul*; they calling that *consulatum* which we call *comitatus* (r). And in the middle age we find the word *consul* used for *comes*, *count*; and *proconsul* for *viscount*. When the earls left their custodies, then was the custody of counties committed to *viscounts*, and they are thereupon called *vice comites*, *quia vices comitis supplent*.

Name and antiquity.

Bracton (s) says, that as *comes* is derived from *comitatus*, so *consul* is derived from *consulendo*: and in the laws of *Edward the Confessor*, mention is made of *vice comites* and *vice consules*.

The word *sheriff* or *shire-reve* is derived from two *Saxon* words, *scire*, *province*, or *shire*; or rather from *sciran*, to divide, and *gersa*, *grave*; *Reve* or *prefect*, being denominated from the first division of the kingdom into counties.

Definition of the word sheriff.

Marculphus saith, this office is *judiciaria dignitas*: *Lampridius*, that it is *officium dignitatis*: *Fortescue*, "*quod vice comes est nobilis officarius*;" and in the *Laws of the Confessor*, "*Verum quod modo vocatur comitatus*," "*olim apud Britones temporibus Romanorum in regno isto Britanniae vocabatur consulatus, et qui modo vocantur vice comites, tunc temporis vice consules vocabantur*; ille vero dicebatur viceconsul, qui consule absente ipsius vices supplebat in jure et in foro" (t).

Lord Coke says, that *shireve* is a word compounded of two *Saxon* words, *viz. shire*, and *reve satrapia*, or *comitatus*, and comes of the *Saxon* verb *shiram*, (i. e.) *partiri*, for that the whole realm is parted and divided into *shires*; and *reve* is *præfectus* or *præpositus*; so as *shireve* is the *reve* of the *shire*, *præfectus satrapiae provinciae*, or *comitatus*. And he is called *præfectus*,

Of Lord Coke.

(r) Co. Litt. 168. Seld. Jan. 53. (t) Co. Litt. 168. a. Fort. c. 24.
73. Mirr. 9. 1 Roll. R. 237. Lamb. 129.

(s) Lib. 1. c. 8.

because he is the *chief officer* to the king, within the *shire*, for the words of his patent be, *commisimus vobis custodium comitatus nostri de*, &c. And he hath a three-fold custody, *viz. vitæ justitiæ*, for no suit begins, and no process is served but by the sheriff; also, he is to return indifferent juries for the trial of men's lives, liberties, lands, goods, &c. Secondly, *vitæ legis*, he is after long suits, and chargeable to make execution, which is the life and fruit of the law. Thirdly, *vitæ reipublicæ*, he is *principalis conservator pacis* within the county, which is the life of the commonwealth (*u.*)

Of Dalton.

Dalton says, that the most eminent and supreme dignity from the Conquest until the 11 *Ed.* 3, was the *earl* or *countée*, being anciently of the blood royal, and taking their names *comites a comitatu*, or *comites nomen acceperunt à comitando, quia principem comitarentur ad bella, publicaque negotia ejus lateri semper hærentes*; or as some say, kings vouchsafed to call them *comites*, companions; for that both out of their love, they will, and out of knowledge, can, and out of courage (the true ground of ancient nobility) dare to advise boldly and truly upon every occasion: and these were of ancient time *præfecti seu præpositi comitatus*, the rulers or governors of *counties* or *shires*, under the king, for so imports the *Saxon* word *shire-reve, id est, le reve del shire*, which is as much as *præpositus comitatus*. And those earls had anciently committed to them, from the king, the charge and custody of the county, which the *sheriff* now hath (*x.*)

Of Speed.

Speed (*y.*) says, king *Ælfred*, first dividing this kingdom into several counties (or shires), instituted a *prefect* or *lieutenant* in every of those *counties*, which then were called *custodes*, keepers, and afterwards *comites*, *earls*, who were to keep the county in obedience to the king, and to suppress the outrages of notorious robbers.

Of Blackstone.

Blackstone (*z.*) says, the sheriff is an officer of very great antiquity in this kingdom, his name being derived from two *Saxon* words signifying the reeve, bailiff, or officer of the shire.

Called in Latin
vice-comes.

He is called in *Latin*, *vice-comes*, as being the deputy of the earl or *comes*; to whom the custody of the shire is

(*u.*) Co. Litt. 168. a.

(*y.*) Fo. 4. & Camd. 156.

(*x.*) Smith de rep. Ang. 59. Co. 9.

(*z.*) 1 Bl. Com. 339.

49. 97. Dalt. 1.

said to have been committed at the first division of this kingdom into counties. But the earls, in process of time, by reason of their high employments, and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden. Reserving to themselves the honour, but the labour was laid on the sheriff. So that now the sheriff does all the king's business *in the county*; and though he be still called *vicecomes*, yet he is entirely independent of, and not subject to the earl; the king by his letters patent committing *custodiam comitatus* to the sheriff, and him alone. He is considered in our books as bailiff to the crown; and his county, of which he hath the care, and in which he is to execute the king's writs, is called his bailiwick. The sheriff is a patent officer of the crown, and is constituted the king's bailiff to gather his rents; and therefore, after the said constitution, the first thing is to prefix him a day to account, and there were two days prefixed, one after the *utis* of *Easter*, and the other after the *utis* of *Michaelmas*, and these were called his proffers, because he then did proffer the king's rents; they gave him two times in a year, because the rents were generally payable half-yearly (*a*).

Sheriff does all the business of the county.

Bailiff to the crown.

The *sheriff* is an ancient officer, and a minister of the king's courts of law and justice; and is to attend at those courts, and execute their process, and make due returns thereof; and he is to answer for the misdemeanors of his bailiffs, who are his servants, and under his government (*b*), or the non-performance of any contract entered into by his deputy. As where an officer had taken possession of goods, and on an extent coming in, had agreed with the creditor to deliver to him a certain portion in consideration of his satisfying the debt of the crown, which the latter accordingly did, and before such delivery the goods were rescued, held that the sheriff was liable (*c*). But he is not liable for misconduct induced by the party himself, and of which he has no knowledge (*d*).

An ancient officer, &c.

To answer for his bailiffs.

Hundreds, joined to the office.

All hundreds that were not granted *in fee* by the crown before the time of *Ed. 3.* are joined to the office of *sheriff* (*e*).

(a) Dalt. c. 1. 7 Co. 33. Gilb. Ex. 146.

(c) Thomas v. Pearce, 5 Pri. 578.

(b) 2 T. R. 154. Underhill v. Wilson, 6 Bing. 697.

(d) Crowder v. Lowe, 8 B. & Cr. 598.

(e) Ray. 361, 362.

Shall have the custody of all gaols in their counties.
19 H. 7. c. 10.

Every *sheriff* within every county of this realm shall have the custody, rule, keeping and charge of every the king's common gaols in the *county* where he is *sheriff*, except the *Marshalsea* and King's Bench prison in *Surrey*, and the *Fleet*.

How originally chosen.

How chosen originally.

SHERIFFS were originally chosen by the people in their *folk-mote* or *county court*(e). And Lord *Coke* says, they were chosen the same as the coroner(f). In confirmation of which it was ordained, by 28 *Ed. 1. c. 38*,

“That the people should have election of their sheriff in every shire where the shrievalty is not of fee, if they list.”

Sheriffs hereditary.

For, anciently, in some counties, the sheriffs were hereditary, as in *Scotland*, till the 20 *G. 2. c. 43*. and still continue in the county of *Westmoreland* to this day(g); and it is said *Cumberland* is hereditary by a particular charter of King *John*. The city of *London* have also the inheritance of the shrievalty of *Middlesex* vested in their body by charter(h), upon condition of paying 300*l.* a-year to the king's exchequer; in consequence of which they have always elected two sheriffs, although they constitute together but one officer; and if one die, the other cannot act until another be elected(i). The reason of these popular elections is assigned in the same statute. c. 13.

“That the commons might choose such as would not be a burthen to them.”

Gothic constitution, judges elected by the people.

Election thus.

And herein appears a strong trace of the democratical part of our constitution; in which form of government it is an indispensable requisite that the people should choose their own magistrates(k). This election was in all probability not absolutely vested in the commons, but required the royal approbation. In the *Gothic* constitution, the judges of their county courts (whose office is executed by our sheriff) were elected by the people, but confirmed by the king: and the form of their election was thus managed: the people, or *incolæ territorii*, chose *twelve electors*, and they nominated three persons *ex quibus rex unum confirmabat*(l). But with us in *England*, these

(e) Seld. tit. Hon. 610.

(f) Pref. 3 Rep. 4 Inst. 174. 558.

(g) Harg. Co. Litt. 326.

(h) 3 Rep. 72.

(i) 4 Bac. Abr. 447.

(k) Mont. Sp. L. b. 2. c. 2.

(l) Stiern. de Jur. Goth. l. 1. c. 3.

popular elections, growing tumultuous, were put an end to by 9 *Ed. 2. st. 2*, which enacted,

Popular elections put an end to, and sheriffs assigned by the chancellor, &c.

“ That the sheriff should from thenceforth be assigned by
“ the chancellor, treasurer, barons of the exchequer, and
“ by the justices, and in the absence of the chancellor, by
“ the treasurer, barons, and justices,”

as being persons in whom the same trust might with confidence be reposed. By 14 *Ed. 3. c. 7. 23 H. 6. c. 8*, and 21 *H. 8. c. 20*,

“ *The chancellor, treasurer, president of the king's council, chief justices, and chief baron, are to make this election; and that on the morrow of All Souls, in the Exchequer.*”

The chancellor, &c. to make election on the morrow of All Souls.
Letters patent. 12 *Ed. 4. c. 1. 12 R. 2. c. 2.*

And the king's letters patent appointing the new sheriffs used commonly to bear date the sixth of *November*. The stat. of *Cambridge* ordains,

“ That the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and the other, barons of the exchequer, and all other that shall be called to ordain, name, or make justices of the peace, *sheriffs*, and other officers of the king, shall be sworn to act indifferently, and to name no man that sueth to be put in office, but such only as they shall judge to be the best and most sufficient.”

Chancellor, &c. to be sworn to act indifferently, and to name such only as they shall judge best.

Since the time of *H. 6.* the custom hath been, and now is,

Custom of choosing since *H. 6.* and now.

“ That all the judges, together with the other great officers, meet in the Exchequer-chamber on the morrow of All Souls yearly, (which day is now altered to the morrow of *St. Martin*, by the last act for abbreviating *Michaelmas* term,) and then and there propose three persons to the king, who afterwards appoints one of them to be the sheriff,”

24 *G. 2. c. 48. s. 12.*

by marking each name with the prick of a pin; and for that reason this particular election is generally termed, *pricking for sheriffs*.

For the particulars of the ceremony used at the nomination in the Exchequer Chamber, see Mr. *Christian's* note to 1 *Bl. Com. 341. ed. 15.*

The sheriffs in every of the shires of *Wales* shall be nominated yearly by the lord president and council, and justices of *Wales*, who are to certify the names to the lords of the king's council, that the king may appoint.

Sheriffs of *Wales*, how appointed. 34 & 35 *H. 8. c. 26. s. 65.*

Custom of proposing three persons borrowed.

Founded upon some statute.

The king appointed a sheriff, which office he refused to take.

The judges' opinion.

Queen appointed sheriffs;

This custom of the *twelve judges* proposing *three persons* seems borrowed from the *Gothic* constitution before mentioned; with this difference, that among the *Goths*, twelve nominors were first elected by the people themselves; which usage of ours was probably founded upon some statute, though not now to be found among our printed laws. First, because it is materially different from the direction of all the statutes before mentioned; which it is hard to conceive that the judges would have countenanced by their concurrence, or that *Fortescue* would have inserted in his book, unless by the authority of some statute; and also, because a statute is expressly referred to in the record which *Coke* tells us (*m*) he transcribed from the council book of 3 *Mar.* 34 *H.* 6. and which is in substance as follows. The king had of his own authority appointed a man sheriff of *Lincolnshire*, which office he refused to take upon him: whereupon the opinion of the judges were taken, what should be done in this behalf. And the two chief justices, *Fortescue* and *Prisot*, delivered the unanimous opinion of them all, "that the king did an error when he made a person "sheriff that was not chosen and presented to him according to the statute; that the person refusing was "liable to no fine for disobedience, as if he had been one "of the three persons chosen according to the tenor of "the statute, and that some other thrifty man be intreated to occupy the office for this year; and that the "next year, to eschew such inconveniences, the order of "the statute in this behalf made be observed." But notwithstanding this unanimous resolution, and the 34 & 35 *H.* 8. c. 26. s. 61. which expressly recognizes this to be the law of the land, some writers have affirmed, that the king by his prerogative may name whom he pleases to be sheriff, whether chosen by the judges or not. This is grounded on a very particular case in the 5 *Eliz.*, and reported in *Dyer*, 225. when by reason of the plague, there was no *Michaelmas* term kept at *Westminster*; so that the judges could not meet there in *cras. anim.* to nominate the sheriffs: whereupon the queen named them herself, without such previous assembly, appointing, for the most part, one of two remaining in the last year's list. And this case is the only authority in our books for making these extraordinary sheriffs. The reporter

(*m*) 2 Inst. 559. Fort. de Laud. c. 24.

adds, that it was held, "that the queen by her prerogative " might make a sheriff without the election of the judges, "*non obstante aliquo statuto in contrarium*;" but the doctrine of *non obstante*, which sets the prerogative above the laws, was effectually demolished by the bill of rights at the Revolution, when King *James* abdicated the kingdom. However, it must be acknowledged that the practice of occasionally naming what are called *pocket sheriffs*, by the sole authority of the crown, hath uniformly continued to the reign of his present Majesty, in which few (if any) instances have occurred.

It hath been adjudged that the office of sheriff is an entire thing, therefore the king cannot apportion or divide it, (although he make or appoint one to be sheriff, *durante bene placito*,) that is, he cannot determine it in part, as for one town, or one hundred; neither can he abridge the sheriff of any thing incident to or belonging to his office (*n*). The office is entire, and so it must continue in that entirety for the whole county, without any fraction or diminution (except it be by an act of parliament, or that the king shall make some town, &c. a county of itself, and shall appoint *there a sheriff*, and all things belonging to a sheriff, within the same town, &c. Neither can the office of a sheriff be determined, nor any part thereof, without and until a new sheriff be made for the execution and administration of justice, (except it be by his own death,) for on the demise of the king, "*he may hold his office six months, unless sooner displaced by the successor*." Nor does it determine by becoming a *peer* on his *father's death* (*o*); though the dignity descends in time of parliament, so that he ought to attend parliament as a peer.

and held she might by her prerogative.

The practice of naming a pocket sheriff hath continued to this day.

The office of sheriff cannot be apportioned or divided.

It is entire, and so must continue, except, &c.

Cannot be determined, until a new sheriff be made, except by death of the sheriff; nor demise of the king. 1 Ann. st. 1. c. 8. Nor by becoming a peer.

Who are QUALIFIED OR EXEMPT from SERVING.

IT is provided, by several acts of parliament, that no man shall be sheriff in any county except he have sufficient lands within the same county where he shall be sheriff whereof to answer the king and his people, in case that any person shall complain against him: and that no one that is steward or bailiff to a great lord, shall be made a sheriff (except he be put forth of service) (*p*).

No man shall be sheriff except he have lands, &c. to answer the king, &c. No steward or bailiff of a great lord. 9 Ed. 2. 5 Ed. 3. c. 4. 4 Ed. 3. c. 9. 5 Ed. 3. c. 4.

(*n*) Davies, 60. 4 Co. 33. Dalt. 6.

(*o*) Cro. El. 12. pl. 3. 25 El. C. B. Mordant's case.

(*p*) Dalt. 6.

No man exempt, but by act of parliament, or letters patent.

The king having an interest in every subject, and a right to his service, it is holden, that no man can be exempt from the office of sheriff, but by act of parliament, or letters patent (*q*).

Persons qualified or exempt.

Prisoners.

Persons disabled by judgment.

Militia officers.
2 G. 3. c. 20.

Protestant dissenters. 1 W. & M. st. 1. ch. 18.

Barristers and attornies.

Person having served the office.
1 Rich. 2. c. 11.

Refusing to take the office, &c. how punishable.

A prisoner for debt is exempt from serving the office of sheriff (*r*). Also one disabled by a judgment in law is excused (*s*). But if he may remove the disability, as in case of excommunication, he shall not take advantage of it. A person, during the time he is acting as a militia officer, shall not be obliged to serve the office of sheriff.

Protestant dissenters, who are exempt by the Toleration Act from the obligation of complying with the requisition of the Corporation Act, and who can plead their non-compliance as a reasonable and sufficient excuse, are not compellable to serve the office of sheriff, nor, of course, to pay any fine for refusal (*t*).

Barristers and practising attornies are exempt (*u*).

No person who has been sheriff of a county for a year shall be chosen again within three years next ensuing. But this does not apply to cases of cities or towns corporate, though counties within themselves (*x*).

Formerly, if a person refused to take upon him the office of sheriff, he was punished in the Star Chamber; but now if he refuses to take the office, or the oaths, or officiates as sheriff before he has qualified himself, he may be proceeded against by information in the King's Bench (*y*).

How to procure the Patent for the new Sheriff. Writ of Discharge of the old Sheriff, and placing the new Sheriff in Office.

He must give security in the court of Exchequer.

THE first thing that every new elected sheriff must do at the entrance into his office, is, that before he receives his patent, and before he exercises any part of his office, he must put in sufficient sureties, by himself, or by

(*q*) Sav. 43. 9 Co. 46. b. 1 Ld. Ray. 29.

(*r*) 2 Mod. 299.

(*s*) 1 Salk. 168.

(*t*) Harrison v. Evans, 2 Burn's Ec. L. 185.

(*u*) Mayor of Norwich v. Berry, 4 Burr. 2109.

(*x*) R. v. Haythorne, 5 B. & Cr. 429 n.

(*y*) Carth. 307. 3 Lev. 116.

his *deputy* or deputies, into the Exchequer, and there enter into recognizance in such sum, and upon such conditions, as the *lord treasurer* and the *barons* of the *Exchequer* shall think meet. But he need not be present.

2 & 3 Ed. 6.
c. 34.

This is done by an application to one of the clerks in court in the Exchequer, who will draw up such recognizance, with condition for payment of his proffers and accounts, and the appointment of a sufficient und-r-sheriff for execution of process; which recognizance is to be taken to the chief, or any one of the barons, with two sureties, who there enter into the recognizances of 200*l.* each. After the recognizance is entered into, the clerk gives a note to one of the six clerks of the court of Chancery, wherein he certifies that the sheriff hath entered into the usual recognizance. The same is to be taken to the deputy of the six clerks, at the Six Clerks Office, who will make out the patent of office, the writ of discharge to the old sheriff, and the patent of assistance, with a writ of *dedimus potestatem* directed to proper commissioners (generally a knight or two clergymen, or two justices of peace with two others) to take the oath of office annexed thereto, and also of allegiance and abjuration pursuant to the stat. 1 *Geo.* 1: when done, the commissioners must certify the same into the court of Chancery, which is filed in the Petty-bag office in the Rolls yard, which certificate is indorsed on the *dedimus*, as follows:

By virtue of this writ to us directed, (to wit), on the
day of in the year within mentioned, the within
named *A. B.* esq. sheriff of the county of took
the oath of office, as well as the several other oaths in the
schedule to this writ annexed, in our presence, as within he
is required to do. The answer of

Return of
dedimus.

F. B. }
M. D. } Commissioners.

By the 3 *Geo.* 1. it is enacted, that instead of the oath usually administered, the following oath shall be taken by them, and each of them respectively, (excepting the sheriffs of the several counties in *Wales*, and of the county palatine of *Chester*,) viz.

c. 15. s. 18.

“ I, *A. B.* do swear, that I will well and truly serve the
“ king’s majesty in the office of sheriff of the county of
“ and promote his majesty’s profit in all things that be-
“ long to my office, as far as I legally can or may; I will
“ truly preserve the king’s rights, and all that belongeth to

Oath of the
high sheriff.

“ the crown ; I will not assent to decrease, lessen, or conceal
 “ the king’s rights, or the rights of his franchises : and when-
 “ soever I shall have knowledge that the rights of the
 “ crown are concealed or withdrawn, be it in lands, rents,
 “ franchises, suits or services, or in any other matter or thing,
 “ I will do my utmost to make them be restored to the
 “ crown again ; and if I may not do it myself, I will certify
 “ and inform the king thereof, or some of his judges ; I will
 “ not respite or delay to levy the king’s debts for any gift,
 “ promise, reward or favour, where I may raise the same
 “ without grievance to the debtors ; I will do right as well
 “ to poor as to rich, in all things belonging to my office ;
 “ I will do no wrong to any man for any gift, reward or
 “ promise, nor for favour or hatred ; I will disturb no man’s
 “ right, and will truly and faithfully acquit at the Exchequer
 “ all those of whom I shall receive any debts or duties be-
 “ longing to the crown ; I will take nothing whereby the
 “ king may lose, or whereby his right may be disturbed,
 “ injured or delayed ; I will truly return, and truly serve all
 “ the king’s writs, according to the best of my skill and
 “ knowledge ; I will take no bailiffs into my service but
 “ such as I will answer for, and I will cause each of them
 “ to take such oaths as I do, in what belongeth to their
 “ business and occupation ; I will truly set and return rea-
 “ sonable and due issues of them that be within my baili-
 “ wick, according to their estates and circumstances, and
 “ make due panels of persons able and sufficient, and not
 “ suspected or procured, as is appointed by the statutes of
 “ this realm ; I have not sold or let to farm, or contracted for,
 “ nor have I granted or promised for reward or benefit, nor
 “ will I sell or let to farm, nor contract for, or grant for re-
 “ ward or benefit, by myself, or any other person for me, or for
 “ my use, directly or indirectly, my sheriffwick or any baili-
 “ wick thereof, or any office belonging thereunto, or the
 “ profits of the same, to any person or persons whatsoever ;
 “ I will truly and diligently execute the good laws and sta-
 “ tutes of this realm, and in all things well and truly behave
 “ myself in my office for the honour of the king, and the
 “ good of his subjects, and discharge the same according
 “ to the best of my skill and power. So help me God.”

Which oath is to be administered and given by such
 commissioners as shall be named and authorized to admin-
 ister the foregoing oath to the high sheriff in the county,
 when and so often as a commission or *dedimus* shall be
 sued forth of the proper court for that purpose, or by the
 barons of the said court, or one of them, when the said
 sheriff desires to be sworn in town.

The sheriff shall, within six calendar months after his election, take and subscribe the oath prescribed by 10 *Geo. 4. c. 7.* (instead of the former oaths of *allegiance*, *supremacy* and *abjuration*,) in one of the courts at *Westminster*, or at the *general or quarter session of the peace* where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other, and shall make the declaration substituted in lieu of the former sacramental test imposed by 25 *Car. 2. c. 2.*

By the 9 *Geo. 4. c. 17.* a declaration also is substituted in lieu of the sacramental test; and the 10 *Geo. 4. c. 7.* enabling Catholics to sit in Parliament, and hold offices, &c., prescribes an oath instead of the oaths of allegiance, supremacy and abjuration.

The sheriffs of *Wales* and *Chester* shall not be obliged to take the said oath first mentioned, but shall take the accustomed oath as formerly, except the words following, viz. :

“ Ye shall be dwelling in your own proper person within
“ your bailiwick for the time ye shall continue in the same
“ office, except ye be otherwise licensed by the king :”

which words shall hereafter be left out.

Nor is that act to extend to the sheriffs of *London* and *Middlesex*, the county palatine of *Durham*, the county of *Westmoreland*, or to the sheriffs of any *city or town* being a *county of itself*, as to their placing in or disposing of any of the offices of their under-sheriffs, county clerks, bailiffs, or other offices, or their continuance therein.

After the sheriff hath taken the oaths before mentioned, then on the *writ of discharge* being *delivered* to his *predecessor*, the old sheriff or his under-sheriff, (or at or before the first county court to be kept by the new sheriff,) the new sheriff must *take over from the old sheriff* all his prisoners, (which are in the gaol by their names,) and *all his writs* precisely by view, and by indenture to be made between the old and new sheriff; in which indenture all the causes which the old sheriff hath against every prisoner must be set forth, and delivered, at the peril of the old sheriff, or else the new sheriff need not take any notice of any thing omitted and left out of the indenture; for he is not chargeable with it, but the old sheriff (z).

Sheriff to take the oath prescribed by 10 *Geo. 4. c. 7.* in one of the courts at W. or the quarter session.

1 *Geo. 1. s. 2. c. 13. s. 2. ;*
2 *Geo. 2. c. 31. s. 3, 4. ;* 9 *Geo. 2. c. 26. s. 3.*

9 *Geo. 4. c. 17. & 10 Geo. 4. c. 7.*

To make the declaration directed by 10 *Geo. 4. c. 7.* Sheriffs of *Wales* and *Chester* not obliged to take the oaths by 3 *Geo. 1. c. 15. s. 22.*

Not to extend to *London* and *Middlesex*, *Durham*, *Westmoreland*, and other cities.

s. 23.

He must take by indenture the prisoners and writs.

When the ancient sheriff discharged.

The ancient sheriff is not discharged, nor the new sheriff charged, till three things are done, *viz.* the patent to the new sheriff, the writ of discharge to the old sheriff, and the delivery of the prisoners by indenture to the new sheriff (*a*).

Writs to be turned over to the succeeding sheriff by indenture. 20 Geo. 2. c. 37. s. 1.

“ All sheriffs shall, at the expiration of their office, turn
“ over to the succeeding sheriff, by indenture and schedule,
“ all such writs and process as remain in their hands un-
“ executed, who shall execute and return the same ; and in
“ case any sheriff neglect to turn over such process, he shall
“ be liable to make satisfaction by damage and costs to the
“ party aggrieved.”

Not bound to receive prisoners, but at the gaol.

The new sheriff is not bound to receive the prisoners from the old sheriff, but only at the gaol, and in no other place ; and yet, if the old sheriff shall deliver his prisoners to his successor when he is chosen, who receives them out of the gaol, the old sheriff shall be discharged by this delivery (*b*).

He must read his patent at first county court, and appoint county clerk, and four deputies to make replevins.

The new sheriff, at the first county court which shall be after his election, and the discharge of the old sheriff, must read, or cause to be read, his *patent* and *writ of assistance*, and also nominate his *under-sheriff*, (or county clerk,) and depute, appoint, and proclaim *four deputies* (at the least) in that county, to make replevins for the ease of the county ; which deputies ought to dwell not past *twelve miles* distant one from another, in every quarter of the county, one to grant replevins in the sheriff's name, and to make deliverance of distresses, when need shall require. And they shall, in the sheriff's name, make replevins, as the sheriff himself may do. And the sheriff, for every month that he shall lack such deputies, shall forfeit 5*l.*, and within two months next after he hath received his patent, he may appoint such deputies, &c. (*c*).

1 & 2 P. & M. c. 12.

Sheriff cannot be elected a knight of the shire for that county he is sheriff of, nor

It is holden that a sheriff cannot be elected knight of the shire for that county for which he is sheriff (*d*). And by statute 1 *Marl. st.* 2. c. 8. s. 2. although a sheriff is by virtue of his office a conservator of the peace, yet it is enacted,

act as a justice of peace.

“ That no person having the office of sheriff of any
“ county shall exercise the office of *justice of the peace* in
“ in any county where he shall be sheriff during the time

(*a*) Cro. El. 366. *Wesly v. Skinner*, Noy, 51.

(*b*) Dalt. 16.

(*c*) Dalt. 19.

(*d*) 4 Inst. 48. *Lutw. R.* 326.

“ he shall use the office of sheriff; and all and every acts
“ to be done by any sheriff, by authority of any commis-
“ sion of the peace, during the time of his sheriffwick, shall
“ be void. But when he is out of office, he may act by
“ the force of the same commission (e).”

By the 14 E. 3. it is enacted,

“ That no sheriff, &c. shall tarry or abide in his office
“ above *one year*, on pain to forfeit 200 l. yearly, as long as
“ he occupieth the office; and that every pardon for such
“ offence or forfeiture shall be void; and letters patent
“ made to occupy such office above one year shall be
“ void, any words or clause of *non obstante* put into such
“ patent notwithstanding; and that whosoever shall pre-
“ sume to take upon himself the office of a sheriff above one
“ year, by force of such letters patent, shall be disabled
“ from ever after to be sheriff within any county of
“ *England*.”

If a new sheriff hath not his patent ready, and does not
take the oaths, &c. every old sheriff may occupy his office
during the term of *St. Michael* and *Hilary*, (after the
year that their office is ended,) unless he be lawfully dis-
charged (f).

But the sheriffs and under-sheriffs within the city of
London, and of such counties, in which they be inheritable
to the office of sheriff, are excepted.

By 3 Geo. 1. it is enacted,

“ That if any high sheriff of any county of *England* or
“ *Wales* shall happen to die before the expiration or deter-
“ mination of his year, or before he be lawfully superseded,
“ in such case the under-sheriff or deputy sheriff by him
“ appointed shall nevertheless continue in his office, and
“ shall execute the same, and all things belonging there-
“ unto, *in the name of the deceased sheriff*, until another
“ sheriff be appointed for the said county, and sworn as
“ directed; and the said under-sheriff, or deputy sheriff,
“ shall be answerable for the execution of the said office
“ in all things, and to all respects, intents and purposes
“ whatsoever, during such interval, as the high sheriff so
“ deceased would by law have been if he had been living;
“ and the security given to the high-sheriff so deceased by
“ the said under-sheriff, and his pledges, shall stand, re-
“ main, and be a security to the king, his heirs and suc-
“ cessors, and to all persons whatsoever, for such under-
“ sheriff's due performance of his office during such in-
“ terval.”

st. 1. c. 7.

How long to
continue in his
office.
28 E. 3. c. 7.
& 42 E. 3. c. 9.
23 H. 6. c. 3.

If new sheriff
hath not his
patent ready,
old sheriff to
hold over.

12 E. 4. c. 1.
17 E. 4. c. 7.
23 H. 6. c. 38.

Sheriffs of
London, &c.
excepted.
23 H. 6. c. 7.

c. 15. s. 8.

Sheriff dying
before his office
expired, his
under-sheriff
or deputy shall
continue in
office, and exe-
cute the same
in the deceased
sheriff's name,
till a new sheriff
sworn, and be
answerable;
and the security
given by the
under sheriff to
the deceased
sheriff is to con-
tinue during the
interval.

(e) Dalt. 27.

(f) Crom. 238.

c. 10.

To abide in
proper person in
his county.

3 Geo. 1. c. 15.

Hath no juris-
diction out of
his county.

9 H. 4. c. 1.

If commanded
hath authority
out of his
county.

So, if a prisoner
escape, the
sheriff may take
him in another
county.

Cannot dispose
of his bailiwick.
23 H. 6. c. 9. s. 1.
4 H. 4. c. 5.

Construction.

Lease, though
no rent reserved,
is within the
statute.

20 H. 7. 13.

Lease reserving
part.

By 23 H. 6. every sheriff shall abide in his proper person within his bailiwick, for the time he shall be such officer, (except he be otherwise licensed by the king,) and that the said sheriff be sworn to do the same in special. But now this latter part is left out in the oath.

Hence, it is clear, that a sheriff hath no jurisdiction in any other county, nor can he do a judicial act, in which his personal presence is required, out of his county; but, it is held, he may a ministerial act, as make a panel or return a writ out of his county (*g*), or assign a bail-bond. But, if he be beyond sea, and make a panel, or any return there, and sends it into *England*, it is not good, for he is an officer only in *England*. An arrest by him in a different county is irregular, if there be no dispute as to the boundaries, though on the verge of the county (*h*). But an application against the under-sheriff on this statute depending mainly on facts, is only *nisi* in the first instance (*i*).

If, on a *habeas corpus*, &c. the sheriff is commanded to carry a prisoner to a certain place *out of his county*, and in doing this he is obliged to go through several counties, to this special purpose he hath authority in these other counties (*k*).

So, if a prisoner, of his own wrong, shall make an escape, and fly into another county, the sheriff or his officers, upon fresh suit, may take him again in another county (*l*).

No sheriff shall assign, grant, or let to farm, his office, in any manner, nor his county, nor any of his bailiwicks, hundreds, nor wapentakes, (nor any of his courts, it seems), nor any part thereof, upon pain to forfeit 40 *l*.

In construction whereof it hath been holden, that this is a particular law, and must be pleaded, otherwise the judges cannot take notice of it (*m*).

It hath been holden, that a lease thereof, though no rent was ever reserved, is within the statute, the intent thereof being that sheriffs should keep their counties in their own hands (*n*).

It seems the better opinion, that a lease reserving only part of the profits is also within the statute (*o*).

(*g*) Dalt. 22.(*h*) Hammond v. Taylor, 3 B. & A.

408.

(*i*) Anon. 2 Ch. 389.(*k*) Dalt. 23.(*l*) Plow. 37. Dalt. 23.(*m*) Ellis v. Nelson. 3 Keb. 678.(*n*) Dalt. c. 20, &c. B. R. Grants,

39.

(*o*) Plow. 27. Dalt. 23.

But it hath been doubted whether a lease made by the sheriff of his office or county only by parol be within the statute (*p*).

By parol
doubted.

By 3 Geo. 1, it is enacted,

“ It shall not be lawful for any person to buy, sell, lett, or
“ take to farm, the office of under-sheriff, or deputy-sheriff,
“ seal keeper, county clerk, shire clerk, gaoler, bailiff, or any
“ other office pertaining to the office of high-sheriff, or to
“ contract for any of the said offices, on forfeiture of 500 *l.*,
“ one moiety to His Majesty, the other to such as shall sue
“ in any court at *Westminster* within *two years* after the
“ offence. Provided that nothing in this act shall hinder any
“ high-sheriff from constituting an under-sheriff, or a deputy
“ sheriff, as by law he may; nor to hinder the under-sheriff,
“ in case of the high-sheriff’s death, when he acts as high-
“ sheriff, from constituting a deputy; nor to hinder such
“ sheriff or under-sheriff from receiving the lawful fees of
“ his office, or from taking security for the due answering
“ the same; nor to hinder such under-sheriff, &c. from ac-
“ counting to the high-sheriff for all such lawful fees as shall
“ be by them taken, nor for giving security so to do; nor
“ to hinder the high sheriff from allowing a salary to his
“ under-sheriff, &c. or other officer, for the execution of the
“ said offices, places, or employments, or any of them, as to
“ him shall seem meet; nor to hinder or prevent the under-
“ sheriff, &c. from taking or receiving such salary or recom-
“ pense for his or their pains and services therein.” s. 11.

c. 11. s. 15.

Penalty of buy-
ing or selling
any office under
a sheriff.

Proviso, not to
hinder him from
constituting an
under-sheriff,
&c.; nor an
under-sheriff,
acting as high-
sheriff on his
death, from ap-
pointing a de-
puty, nor from
taking the fees
of their office, or
security for
answering the
same, nor dis-
charge any
officer from ac-
counting, &c.
for fees, nor

hinder the sheriff from allowing salaries, nor any of them from receiving the same.

The Condition of the Recognizance.

“ **T**HAT if the sheriff do, on the morrow of the close of
“ *Easter*, and *St. Michael* the Archangel next, make his
“ proffers of the issues of his bailiwick, to as great sums or
“ better as any of his predecessors, late sheriffs of the said
“ county, have done, at any time of the said morrows, in
“ in any of the four years last past; and also if the said
“ sheriff shall personally appear before the barons of this
“ court in *fifteen days from the day of St. Hilary*, to yield
“ to His Majesty a true and faithful account of the issues
“ and profits of his bailiwick, and to finish the same ac-
“ count, and pay all that shall be due thereon, before the
“ morrow of the Ascension then next following, or shall
“ otherwise lawfully discharge himself thereof; and if he the
“ said sheriff, shall have and assign his able and sufficient
“ attorney or deputy in this court, the same court sitting,
“ who shall attend the court from time to time to receive and
“ return the writs and commandments of the same court,

The condition.

(*p*) Dalt. 24.

“ according to the statute in that behalf provided; then
 “ this recognizance to be void, or else to remain in full
 “ force and virtue.”

The patent of
 office of sheriff.

William, &c. To all to whom these our letters patent letters patent shall come greeting: *Know ye* that we have committed to our well-beloved _____ Esquire, the custody of our county of _____ with the appurtenances, during our pleasure, so that he annually render unto us our due farms, and answer to us touching our dues and all other matters concerning the office of sheriff of the county aforesaid, in our court of Exchequer. In witness whereof we have caused these our letters to be made patent: Witness ourself at _____ the _____ day of _____ in the _____ year of our reign.

The writ of
 discharge.

William, &c. To our beloved _____ Esquire, late sheriff of our county of _____ greeting: whereas we have committed to our beloved _____ Esquire, the custody of our said county, with the appurtenances, to hold the same during our pleasure, as by our letters patent to him thereof made more fully appears: we command you, that you deliver to the said _____ our aforesaid county, with the appurtenances, together with the rolls, writs, memorandums, and all other things belonging to the office of sheriff of the said county, which are in your custody, by indenture duly executed between you and the said _____ Witness ourself at _____ the _____ day of _____ in the _____ year of our reign.

Now exempted
 from stamp
 duty, 55 Geo. 3.
 c. 184.

Patent of assist-
 ance.

William, &c. To archbishops, bishops, dukes, earls, barons, knights, freeholders, and all others of our county of _____ greeting: whereas we have committed to our well-beloved _____ Esquire, the custody of our said county, with the appurtenances, during our pleasure, as as by our letters patent to him thereof made more fully appears; we command you, that ye be aiding, answering, and assisting to the said _____ as our sheriff of our said county, in all things which appertain to the said office. In witness whereof we have caused these our letters to be made patent. Witness ourself at _____ the _____ day of _____ in the _____ year of our reign.

Of the *Sheriffs of London, &c.*

Grant of the
 shrievalty of
 London and
 Middlesex.

BEFORE I proceed farther, it may not be improper to take notice of the sheriffs of *London*, who hold the shrievalty of *Middlesex*, granted to the citizens of *London* by charter of *H. 1.* at 300 *l. per annum*, and confirmed to them by King *John*, with all customs belonging, within

the city and without, paying 300 *l.* *per ann.* at the *Easter* and *Michaelmas* Exchequer(*q*).

London is a county of itself; and so long as this city hath been a county of itself, so long there have been sheriffs, for it cannot be a county without sheriffs. Sheriffs of *London* are as *two* in *London*, but in *Middlesex* they are but as one(*r*).

London
a county.

By an act of common council, dated 7th *April* 1748, intituled,

Act of common
council relating
to elections of
sheriffs of
London.

“ An act for repealing all former acts, orders and ordinances, touching the nomination and election of sheriffs of the city of *London* and county of *Middlesex*; and for regulating and enforcing such nominations and elections for the future,” reciting, that from time immemorial, there have been, and of right ought to be, two sheriffs of this city, which said two sheriffs, during all the time aforesaid, have constituted, and of right ought to constitute, one sheriff of the county of *Middlesex*. That the sheriffwick of this city, and the sheriffwick of the said county of *Middlesex*, from time immemorial, belonged, and do of right belong, to the mayor and commonalty and citizens of the city of *London*. That the several acts, orders, and ordinances, heretofore made and passed in this city, touching the choice or election of persons to the offices of sheriffalty of this city and county of *Middlesex*, and for compelling the persons so chosen or elected to accept and serve the said offices, have hitherto proved ineffectual to answer the several purposes in and by such acts, orders and ordinances, expressed or intended. For remedy thereof, be it enacted, and it is hereby enacted and ordained, by the Right Honourable the Lord Mayor, the Right Worshipful the Aldermen and the Commons of this City, in this present common council assembled, and by the authority of the same, that all and every of the said acts, orders and ordinances, so far as the same relate to the said offices of sheriffalty, shall from henceforth be, and the same are hereby repealed, annulled, and made utterly void and of none effect. That from henceforth the right of electing persons to the said offices of sheriffalty shall be, and the same is hereby vested in the liverymen of the several companies of this city, to be for that purpose from time to time assembled in the common hall of the *Guildhall* of this city; and that the general day of elections of persons to the said offices shall be, yearly, the 24th day of *June*, unless the same shall happen to be *Sunday*, in which case the said election shall be on the day then next following.

Sheriffwicks of
the city of Lon-
don and Mid-
dlesex have
belonged to the
mayor, &c.
Acts and ordi-
nances proved
ineffectual.

Former acts
repealed.

Who to elect
sheriffs, and
when to be the
general election
day.

(*q*) Priv. of Lond. 5. (*r*) 4 Inst. 248. Raymond v. Barber, 2 Show. 433.

In what instances elections to be on other days.

When persons elected are to take, and how long to hold the office.

In what instances old sheriffs shall hold over.

That whenever it shall happen that any person or persons elected to the said offices of sheriffalty shall in any instance refuse or neglect to conform to this act, or shall depart this life, or be lawfully removed or discharged from the said offices, or from his or their respective election thereunto, or that, upon any other occasion whatsoever, there shall be just cause to proceed to a new election; then, and in every such case, it shall and may be lawful to and for the liverymen of the said several companies of this city, duly assembled as aforesaid, to proceed to and make such *new election, at such day and time as by the court of lord mayor and aldermen of this city for the time being shall be ordered or appointed, any thing to the contrary notwithstanding.* That every person who shall hereafter be elected to the said offices of sheriffalty upon the said general election day, or any other time between the said general election day and the 22d day of *September* in the same year, when there shall be no actual vacancy in the said offices, shall take the same upon him on the *vigil of St. Michael the archangel next following his said election*, and shall hold the same for and during the space of one whole year from thence next ensuing; and that every person who shall be elected to the said offices on the said 22d day of *September*, or at any time between the said 22d and 28th days of *September*, or upon a vacancy happening in the said offices, or when the sheriffs of this city and county of *Middlesex* for the time being, or either of them, shall hold over, as is hereinafter mentioned and provided, shall take the said offices upon him, on the seventh day next after notice of his said election, and shall hold the same until the swearing in of the new sheriffs upon the vigil of *St. Michael the archangel next following the day of his taking the said offices upon him as aforesaid.* That if upon any future vigil of *St. Michael the archangel* it shall happen that neither of the said persons elected to the said offices of sheriffalty shall appear in the *Guildhall* aforesaid, and take the said offices upon him, then, and in every such case, both the then sheriffs shall hold over and continue in the said offices until some other persons shall be duly elected and sworn into the same in their stead; and if, upon any such *vigil*, it shall happen that only one of the persons elected to the said offices shall so appear, and take the said offices upon him, then, and in every such last mentioned case, the junior in office of the then sheriffs shall hold over and continue in the said offices until some other person shall be duly elected and sworn into the same in his stead, any thing, or any law or custom, to the contrary notwithstanding. That from henceforth, at every assem-

bly of the liverymen of the several companies of this city for the election of a person or persons to the said offices of sheriffalty, every alderman of this city who shall not actually have served the same shall, according to his seniority in the said court of lord mayor and aldermen, and before any commoner of this city, be publicly put in nomination for the said offices; and every alderman of this city who shall be elected to the said offices shall therein take place according to his seniority in the said court, and have precedence of every commoner of this city.

That from henceforth for ever, it shall and may be lawful to and for the lord mayor of this city for the time being, at such time or times as he shall think proper between the 14th day of *April* and the 14th day of *June* in every year, to nominate, in the said court of lord mayor and aldermen of this city, one or more fit and able person or persons, (not exceeding the number of nine persons in the whole,) being free of this city, to be publicly put in nomination for the said offices of sheriffalty, to the liverymen of the several companies of this city, to be hereafter in the common-hall aforesaid assembled, for the election of a person or persons to the said offices; and the person or persons so nominated by any lord mayor of this city shall, at every such assembly of the said liverymen after his and their respective nominations by the lord mayor as aforesaid, be publicly put in nomination for the said offices before any other commoner of this city, and in the same order as he or they shall stand nominated by the lord mayor, until he or they shall respectively have been duly elected to the said offices, or shall have been duly discharged of and from such nomination, in such manner as is hereinafter mentioned.

Provided always, that if any person so nominated by any lord mayor of this city shall, within six days after notice thereof, pay to the chamberlain of this city for the time being the sum of 400*l.* for the uses hereinafter mentioned, and twenty marks towards the maintenance of the ministers of the several prisons within this city, together with the usual fees, every such person shall be, and is hereby for ever exempted and discharged from such nomination, and from serving the said offices of sheriffalty, unless he shall afterwards take upon him the office of an alderman of this city, in which case he shall be liable to be elected to the said offices of sheriffalty, such payment of the said sum of 400*l.* and twenty marks notwithstanding.

That at every assembly of the liverymen of the said several companies of this city, in the said common-hall assembled, for the election of one or more person or persons to the said offices of sheriffalty, all and every such

In what order the old aldermen to be put up and take place.

Power to the lord mayor to nominate persons, and how they shall be put up.

400*l.* to be paid to discharge persons nominated by the lord mayor.

In what order persons nominated by two liverymen are to be put up.

person or persons, being free of this city, and then not exempted or discharged from the said offices, as shall then and there be for that purpose nominated by any two or more of the said liverymen then and there present, and having a right of voting at such election, shall be publicly put in nomination for the said offices next after such person or persons as shall have been so nominated for the said offices by any lord mayor of this city, and shall not then have been discharged from such nominations, (if any such shall then be,) or in default of such person or persons last mentioned, then next after such of the aldermen of this city as shall not have served the said offices.

In what cases,
by whom, and
how far persons
to be excused
for insufficiency
of wealth.

And by a new act of common council, holden 11th of June 1799, it is ordained, That no freeman of this city who shall hereafter be elected by the said liverymen as aforesaid, or nominated by any lord mayor of this city as aforesaid, to or for the said offices of sheriffalty, shall be discharged from such election or nomination for insufficiency of wealth, unless he shall and do voluntarily take his corporal oath, before the said court of lord mayor and aldermen, "that he then is not of the value of 20,000*l.* "in lands, goods, and separate debts, and also unless six "other citizens, freemen of this city, to be brought by him, "and being of good credit and reputation, such as the said "court shall approve of, shall and do likewise, before the "same court, voluntarily testify, upon their corporal oaths, "that in their consciences they believe the said person so "elected by the said liverymen, or so nominated by the "lord mayor, (*as the case shall happen to be,*) hath deposed "and sworn truly concerning his value as aforesaid;" in which case, and so often as the same shall happen, the said court of lord mayor and aldermen shall and may, at all times hereafter, discharge any person whatsoever as well of and from any nomination which shall have been made of him by any lord mayor of this city as aforesaid, as of and from any election which shall have been made of him by the liverymen of the several companies of this city as aforesaid, any thing notwithstanding.

In what instan-
ces the persons
elected to give
bond, and the
forfeiture in case
of default.

And by the said former act of common council, 7th of April 1748, it is provided and enacted, That every person who shall be elected to the said offices of sheriffalty, upon the said general election-day, or at any other time between the said general election day and the 14th day of *September* in the same year, when there shall be no actual vacancy in the said offices, shall personally appear before the said court of lord mayor and aldermen in the inner chamber of the *Guildhall* aforesaid, at the first court there to be holden next after notice of his election, unless such reasonable

excuse shall then and there be offered on his behalf as the said court shall allow; and in case of such excuse allowed, then at such other subsequent court or courts as the said court shall appoint, and shall then and there become bound to the chamberlain of this city for the time being, his executors and administrators, by his bond or obligation, in the penal sum of 1,000*l.* with condition thereunder written, or thereupon indorsed, "that if he shall personally appear on the vigil of *St. Michael* the archangel then next following, between the hours of twelve and three of the clock in the afternoon, in the public assembly in the said *Guildhall*, in the place where the court of *Hustings* is usually holden, and then and there, in the presence of the lord mayor of this city for the time being, and two of the aldermen of this city for the time being, and in case of the absence of the lord mayor, then in the presence of four of the aldermen, take the oath of office, there usually taken by the sheriffs of this city and county of *Middlesex*, then the said bond or obligation shall be void," upon pain that every person so elected who shall not appear and become bound as aforesaid shall (if an alderman of this city, or a commonor previously nominated by the lord mayor of this city as aforesaid) forfeit and pay, to the uses hereinafter mentioned, the sum of 600*l.*, or if he shall not then be an alderman of this city, or a commonor so previously nominated by the lord mayor of this city, the sum of 400*l.*

That if any freeman of this city who shall be duly elected to the said offices of sheriffalty upon the said 14th day of *September*, or at any other time between the said 14th day and 22d days of *September* in the same year, when there shall be no actual vacancy in the said offices, and shall have six days notice thereof as aforesaid, shall not appear on the vigil of *St. Michael* the archangel next after such notice, between the hours of twelve and three, in the public assembly in the *Guildhall* aforesaid, in the place where the said court of *Hustings* is usually holden, and then and there, in the presence of the lord mayor of this city for the time being, and two of the aldermen of this city for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of this city for the time being, take the oath of office there usually taken by the sheriffs of this city and county of *Middlesex*, then and in every such case such person shall (if an alderman of this city, or if a commonor previously nominated by the lord mayor as aforesaid) forfeit and pay, to the uses hereinafter mentioned, the

Penalties on persons elected on the 14th, or between the 14th and 22d of *September*, when no vacancy, who shall not take the said offices in time.

sum of 600 *l.*, or if he shall not then be an alderman of this city, or a commoner so nominated by the lord mayor, the sum of 400 *l.*

Penalties on persons elected on the 22d, or between the 22d and 28th of September, or in cases of vacancy, or of sheriffs holding over, who shall not take the office in time.

That if every freeman of this city who shall be duly elected to the said offices of sheriffalty on the said 22d day of *September*, or at any time between the said 22d and 28th of *September*, or upon a vacancy happening in the said offices, or when the sheriffs for the time being, or either of them, shall have held over as aforesaid, shall not personally appear on the seventh day next after notice of his election, between the hours of twelve and three, in the public assembly at the *Guildhall* aforesaid, in the place where the said court of *Hustings* is usually holden, and then and there, in the presence of the lord mayor of this city for the time being, and two of the aldermen of this city for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of this city for the time being, take *the oath of office there* usually taken by the sheriffs of this city and county of *Middlesex*, then and in every such case such person shall (if an alderman of this city, or a commoner previously nominated by the lord mayor as aforesaid) forfeit and pay, to the uses hereinafter mentioned, the sum of 600 *l.*, or if he shall not then be an alderman of this city, or a commoner so previously nominated by the lord mayor, the sum of 400 *l.*

How penalties are to be recovered.

That all penalties and sums of money to be forfeited by virtue of this act or ordinance shall be recovered by action of debt, to be commenced and prosecuted in the name of the chamberlain of this city for the time being, in one of the courts of record of the king's majesty, his heirs and successors, within this city, where no *essoign* or *wager of law* shall be admitted or allowed for the defendant (*r*); and that the chamberlain of the city for the time being, in all such actions to be prosecuted by virtue of this act wherein he shall obtain judgment by verdict, *nil dicit*, or confession, or upon demurrer, shall and may recover his costs of suit; and if a verdict shall be given for the defendant, or if the plaintiff shall be nonsuited, or discontinue his action after defendant shall have appeared, or if upon demurrer judgment shall be given against the plaintiff, the defendant or defendants shall and may recover costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law.

In what case the sheriffs to have part of the fines, and

That if it shall happen that two or more persons nominated by any lord mayor or lord mayors of this city, for the said offices of sheriffalty, shall, between the 14th of

(*r*) 5 Mod. 438. Carth. 480.

April and the 24th *June* in any one year, pay unto the chamberlain of this city for the time being the sum of 400 *l.* to be exempted and discharged from their said nomination, and from serving the said office according to the proviso for that purpose hereinbefore contained, then and in every such case the said chamberlain for the time being shall, out of the monies so paid to him, issue and pay the sum of 100 *l.* to each of the two persons who, upon the vigil of *St. Michael* the archangel in that year, or at any other time thereafter, shall first and next take the said offices upon them; and if it shall happen that only one person so nominated by any lord mayor shall pay the said sum of 400 *l.* within the time and for the purpose aforesaid, then and in every such last-mentioned case the said chamberlain for the time being shall therout issue and pay the sum of 50 *l.* to each of the two persons who, upon the said vigil in that year, or at any other time hereafter, shall first and next take the said offices upon them; and that the residue of all and every the sums of 400 *l.* which shall hereafter be paid to the chamberlain of this city for the time being, within the time and for the purpose aforesaid, and also all penalties and sums of money to be forfeited and paid by virtue of and in pursuance of this act, shall go and be applied to the use of the said mayor and commonalty and citizens of the city of *London*, subject to such orders and resolutions of this court as have hitherto been made touching the monies paid into the Chamber of *London* as a fine for not holding the said offices, and to such further orders and resolutions of this court as shall hereafter be made touching the same.

how the rest of the fines and forfeitures to be applied.

That every person who hath at any time heretofore paid to the chamberlain of this city for the time being, for the use of the mayor and commonalty and citizens of the same city, any sum of money to be exempted or discharged from the said offices of sheriffalty, shall be, and is hereby for ever exempted and absolutely discharged from the said offices of sheriffalty, unless such person shall at any time hereafter take upon him the office of an alderman of this city, in which case he shall be, and is hereby declared to be, subject and liable to be elected to the said offices, such payment or any thing to the contrary notwithstanding.

No person who has been fined upon any former acts to be eligible.

That no person who now hath, or hereafter shall have duly served the said offices of sheriffalty of this city and county of *Middlesex*, according to the true intent and meaning of this present act, or of any former act of common council, shall hereafter be eligible to the said offices a second time, any thing contained to the contrary notwithstanding.

No person to serve a second time.

The Oath of the Sheriff.

The oath of
the sheriffs of
London.

“YE shall swear, that ye shall be good and true unto
“ our sovereign lord the king of *England*, and unto
“ his heirs and successors; and the franchise of the city
“ of *London*, within and without, ye shall save and main-
“ tain to your power; and ye shall well and lawfully keep
“ the shires of *London* and *Middlesex*, and the offices
“ that to the same shires appertain to be done well and
“ lawfully, ye shall do after your wit and power; and
“ right ye shall do, as well to poor as rich, and good cus-
“ tom you shall none break, ne evil custom arrere, and the
“ assize bread all, and all other victuals within the fran-
“ chise of this city and without, well and lawfully ye shall
“ keep, and do to be kept, and the judgments and execu-
“ tions of your court ye shall not tarry without cause
“ reasonable; ne right shall you none disturb. The writs
“ that to you come touching the state and franchise of this
“ city you shall not return till you have shewed them to
“ the mayor and the council of this city for the time being,
“ and of them have advisement; and ready you shall be,
“ at reasonable warning of the mayor, for keeping of the
“ peace, and maintaining the state of this city; and all
“ other things that longen to your office, and the keeping
“ of the said shires, lawfully you shall do, by you and
“ yours; and the city you shall keep from harm after your
“ power, and the shire of *Middlesex*; ne the gaol of
“ *Newgate* you shall not let to farm. *As help you God.*”

Addition.

“YE shall also swear, that ye shall freely give all such
“ rooms and offices of serjeants and yeomen, as shall
“ happen to become void during the time ye shall remain
“ in the office of sheriffalty, to such apt and able person
“ and persons as shall be by you nominated to the lord
“ mayor and court of aldermen, and by them admitted,
“ without any money or other reward to be had, taken or
“ hoped for in respect thereof, according to the act of
“ common council made and provided in that behalf, the
“ nine-and-twentieth day of *April*, in the six-and-twentieth
“ year of the reign of our sovereign lady queen *Elizabeth*,
“ &c. *As God you help.*”

To attend to
be sworn in.

The sheriffs are to attend on *Michaelmas-day* at *Guild-
hall* to be sworn in; in the evening to take by indenture
the prisoners in *Newgate* on the *Middlesex* side, and by
inrolment on the *London* side of *Ludgate* and *Giltspur-
street Compters*, and at the same time execute the grants
to the keepers of *Ludgate* and *Newgate*.

The keepers of *Ludgate* and *Newgate*, as well as the serjeants at mace, execute their securities in the morning.

The next day the sheriffs attend at the Exchequer before the cursitor baron, to be sworn to answer and pay the fees, &c.

On the morrow after *Low Sunday*, they attend at the Exchequer, and have ready the Exchequer clothes, (which are provided ready, and 40 s. by tally for the proffers for the liberties and franchises of *London* and *Middlesex* for half a year then ended: a public breakfast is prepared for the cursitor baron and clerks.)

The like payment is to be made on the morrow after *Michaelmas-day*; in default of which the liberties and franchises of the city are liable to forfeiture. Herrings are provided by the sheriffs for the officers of the court as a breakfast this day.

In *Michaelmas* term to present the barons and officers with 42 loaves of fine sugar, *viz.* 6 to the chief baron, 6 to the cursitor baron, 12 to the pipe officer, 12 to the secondaries, 6 to the under-sheriffs.

The serjeants and yeomen had formerly at *Christmas* winter liveries, and at *Midsummer* summer liveries, which are now reduced to one livery, and in lieu thereof, the serjeants are paid 33 s. and 4 d. a-piece, and the yeomen 30 s. a-piece.

Serjeants and yeomen.

The sheriff shall put his name to the return; and in *London*, where there are *two* persons, *both* ought to put their names, for they are but one sheriff (s.) *So of Coroners.*

Returns.

12 Ed. 2. 5.

39 H. 6. 41.

Where one of the sheriffs of *London* dies the other cannot act, because he is no sheriff, but must wait until another be chosen; for there must be two sheriffs of *London*, which is a city and county; but one sheriff of *Middlesex*, which is only a county (t).

When one dies the other cannot act.

London had no sheriffs in the 13 *Edw.* 1. (u).

A man was arraigned and condemned of felony, and was imprisoned in *Newgate*, at the gaol delivery for *Middlesex*; and afterwards a writ of execution for debt issued against him out of the Exchequer, directed to the sheriffs of *London*, who serve the execution upon the body of the prisoner in *Newgate*; and afterwards, the felon being pardoned of the felony, it became a question whether the execution was lawful? And if it was, then whether the

A man condemned in execution for debt, execution issues, sheriffs of *London* serve it, the man pardoned, whether execution be lawful.

(s) Hob. 79.

(t) 1 Leon. 281.

(u) 1 Show. 289.

Held by the Barons not lawful, because he was of the Middlesex side.

The sheriff may choose to serve the execution or not,

yet if he will serve it, held good, and liable to an escape.

On *ca. sa.* to sheriff of Middlesex, if he take him, and after another to sheriffs of London, he shall not be charged in London.

Commitment by sheriff of Middlesex is not a commitment in London, though the sheriffs of London and Middlesex are one.

Importance to have sheriff appointed.

pardon had not discharged it? First, by all the Barons, the execution served by the sheriffs of *London*, by force of a *capias* directed to the sheriffs of *London*, was not lawful, because the party was in prison in the gaol of *Middlesex*; and although *Newgate* was within *London*, yet as a prison indifferent to both counties, and the prisoner was in the prison for *Middlesex*, and not for *London*; and the process ought to have been directed to the sheriff of *Middlesex*. Secondly, the sheriff may choose to serve the execution or not upon the body of the felon for debt; for that, inasmuch as the king by the judgment of the felony hath interest in his person, this interest is sufficient privilege against the action, or execution of any subject; yet if the sheriff will serve the execution, then the prisoner shall be said to be in execution for the debt, and yet subject to the judgment of felony for the king; and if the felon escape, the sheriff shall answer to the king and the party also; and if the king pardon the felony, and the sheriff suffer him to go at large, it is an escape.

That upon a *ca. sa.* to the sheriff of *Middlesex* to take *J. S.*, if the sheriff take him and put him in *Newgate*, which is the common prison for *London* and *Middlesex*, and after another writ of execution comes to the sheriffs of *London*, although the sheriffs of *London* are also sheriff of *Middlesex*, and *Newgate* (where the prison is) is the prison for both counties, yet the prisoner shall not be said to be in execution upon this new writ in *London*, nor may the sheriffs of *London* serve it upon him, because he is in another county. For when the commitment is to *Newgate* by force of a writ directed to the sheriff of *Middlesex*, he may not be said in any respect to be in the city of *London*; for the counties continue several, and the prison several, in respect to the several commitments; for there are two several sides, and a partition between them (x).

The High-Sheriff's Office, Powers and Duty; and also of appointing an Under-Sheriff and other Deputies.

IT is of the utmost importance to have the sheriff appointed according to law, when we consider his power and duty. These are either *as a judge*, as the *keeper of the king's peace*, as a *ministerial officer* of the *superior courts of justice*, or as the *king's bailiff*.

(x) 1 Rol. Abr. 894. Coar's case.

In his *judicial capacity* he is to hear and determine all causes of forty shillings value and under in his county court, and he has also a judicial power in divers other civil cases; in a writ of *redisseisin*, the sheriff acts as judge, as well as minister; so in inquiry of waste, and admeasurement of pasture, when he executes his *judicial* authority, he must do it in person, and it is not sufficient by the under-sheriff or other deputy (*y*).

Judicial office
and capacity.

As the *keeper of the king's peace*, both by common and special commission, he is the first man in the county, and superior in rank to any nobleman therein, during his office (*z*). He may apprehend, and commit to prison, all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the king's peace. So he may order a person, making a disturbance at a county court for the election of a knight, to be taken into custody, and carried before a justice to give security for good behaviour (*a*). He may, and is bound *ex officio* to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the king's enemies when they come into the land: and for this purpose, as well as for keeping the peace, and pursuing felons, he may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county (*b*), which summons every person above fifteen years old, and under the degree of a peer, is bound to attend upon warning (*c*), under pain of fine and imprisonment. But though the sheriff is thus the principal conservator of the peace in his county, yet, by the express directions of the great charter, he, together with the constable, coroner, and certain other officers of the king, are *forbidden to hold any pleas of the crown*, or in other words, *to try any criminal offence*. For it would be highly unbecoming *that the executioners of justice should be also the judges*; should impose, as well as levy, fines and amercements; should one day condemn a man to death, and personally execute him the next. Neither, as has been said before, may he act *as an ordinary justice of the peace within his county* during the time he acts as a sheriff.

As keeper
of the king's
peace.

Posse comitatus.
Persons above
fifteen to attend.

2 H. 5. c. 8.

c. 17.

Cannot hold
pleas of the
crown.

Reason.

st. 1. M. Sess. 2,
c. 8.

(*y*) 5 Com. Dig. 595.

(*z*) 1 Rol. R. 237.

(*a*) Spilsbury v. Micklethwaite, 1 Taunt. 146.

(*b*) Dalt. c. 95.

(*c*) Lamb. Eir. 315.

Ministerial
capacity.

In his *ministerial capacity*, the sheriff is bound to execute and return all process issuing from the king's courts of justice to him directed. In the commencement of civil causes, he is to serve the writ, to arrest, and to take bail; when the cause comes to trial, he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, returns the jury, has the custody of the delinquent, and executes the sentence of the court, though it extends to death itself.

Ministerial
office.

The *ministerial office* of sheriff consists in bailment of prisoners; in making replevin; in election of knights and burgesses for parliament, coroners and verderors; in attendance upon the judges, justices, &c. in proclamation of statutes, and in keeping and collecting the rights and revenues of the king (*d*).

As the King's
bailiff.

As the *king's bailiff*, it is his business to preserve the rights of the king within his bailiwick; for so his county is frequently called in the writs, a word introduced by the princes of the Norman line, in imitation of the *French*, whose territory is divided into bailiwicks, as that of *England* into counties. He must seize, to the king's use, all lands devolved to the crown by attainder or escheat; must levy all fines and forfeitures; must seize and keep all waifs, wrecks, estrays, and the like, unless they be granted to some subject; and must also collect the king's rents within his bailiwick, if commanded by process from the Exchequer (*e*).

Accountable to
the king of all
farms, &c. of
his county. But
for escheats, &c.
not unless they
come to his
hands.

As soon as he is made sheriff, he is accountable to the king of all farms, rents, issues, and profits of the county, which run in account under the name of Vicontiels. But for the escheats of the green wax (out of the Exchequer) and such others, (as for the fines and amerciaments set in any court upon offenders, issues lost for default of appearance, the king's debts, &c.) the sheriff is not chargeable as sheriff at the first, nor at any times after, nor to levy the same, except the sums be *estreats del sommes* come to him out of the Exchequer, and then, when he hath them, he is chargeable and accountable (*f*).

2 H. 7. 6.

Sheriffs are to cause clerks of assize and other officers to take sufficient recognizances (*g*).

(*d*) Mod. 242.

(*e*) Dalt. c. 9. F. de laud. c. 24.

(*f*) Dalt. 49.

(*g*) 10 Pri. 114. Gen. Ord.

As writs and process are directed to the sheriff, neither he nor his officers are to dispute the authority of the court out of which they issue, but he and his officers are, at their peril, truly to execute the same, and that according to the command of the said writs, and hereunto they are sworn (*h*); but not if the court be an illegal one (*i*).

Sheriff not to dispute the authority of the court.

The sheriff, being obliged to execute every writ and process issuing and directed to him by lawful authority, he is likewise obliged by the duty of his office to execute such process, *without favour*, with the utmost expedition and secrecy, and as soon after he receives it as the nature of the thing will admit of; and herein there cannot be a surer thing to go by "*than a strict observance of what is enjoined by the writ*;" but as, on the one hand, he must not show any favour, nor be guilty of any unreasonable delay, so, on the other hand, he must not be guilty of oppression, nor make use of other force, nor greater violence, than the thing requires.

Obliged to do the duty of his office.

Not to show favour, nor be guilty of oppression.

The sheriff is an officer of that eminence, confidence, and charge, that he ought to have all right pertaining to his office, and ought to be favoured in law, before any private person (*k*); and the King cannot abridge his power (*l*).

Ought to be favoured.

By the common law, he is the same officer to the court of King's Bench as the constable is to the justices of the peace (*m*).

Bench as the constable is

He is the same officer to the court of King's to the justices.

If any sheriff, &c. who hath execution of process, be slain in doing his duty, it is murder in him who kills him, although there were not any former malice between them; and if there is error in award of process, in the mistake of one process for another, as a *capias* in debt against a peer, and an officer be slain in the execution thereof, the defendant shall not have advantage of such error, no more than a sheriff who suffers a prisoner to escape shall take any advantage of error thereby. And, in this case, there needs not a special indictment to be drawn, but a general, that such a party, of his malice aforethought, struck, &c., for the law presumes malice, though none be proved; so it is, if any shall come in aid of them. And an officer, if he be resisted, is not bound to fly to the wall, as other subjects are (*n*).

Killing of the sheriff in doing his duty is murder.

No need of special indictment.

(*h*) Dalt. 164.

(*i*) Hob. 63.

(*k*) 4 Co. 33.

(*l*) Hob. 13.

(*m*) Salk. 175. 2 Ld. Ray. 1195. Fortes. 129.

(*n*) Cro. Jac. 280, pl. 13. 9 Rep. 66.

Every man is bound to assist.

Every man is bound, by the common law, to assist, not only the sheriff in his office for the execution of the king's writs according to law, but also his bailiff that hath the sheriff's warrant in that behalf hath the same authority which his master hath: for the sheriff cannot do all himself; and if they do it not, being required, they shall be fined and imprisoned (*o*). But before the sheriff uses force, he ought to demand the goods to be delivered, for force ought to follow, not precede the law.

Before he uses force, &c.

Sheriff guilty of homicide if he does not observe the order of law in putting a man to death : 25 G. 2. c. 37.

Though the sheriff be so much favoured and respected in the law, and in the very execution of criminals, yet he shall be guilty of homicide for not observing the order of law in putting a condemned man to death (*p*).

If the writ commands the sheriff to go in person, and he return and file it that he has so done, good, though he did not attend.

In all cases where the writ commands the sheriff to go in person, there the writ is his commission, from which he cannot deviate; but if the sheriff returns that he was there in person, and this return be received and filed, then any information to the contrary comes too late, because by the filing it is become a matter of record, against which no averment *in pais* lies, neither can the party have error upon the return (*q*).

The duty of sheriff to execute writs, but not to use force or violence, unless they find resistance.

Though it be the duty of the sheriff, &c. having the execution of the king's writs, and, being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance, yet it is said not to be lawful for them to raise a force for the execution of a *civil process* unless they find a resistance; and it is certain that they are highly punishable for using any needless outrage or violence therein (*r*).

Particular duties of the sheriff.

The ministerial authority, duty or office of the sheriff, consists principally of these things, as laid down by *Dalton* (*s*).

“ 1. Truly to keep the king's rights of his crown within his county: sc. the king's lands, franchises, suits, rents, and all other things that belong to the crown.

“ 2. Truly to gather (and bring into the Exchequer) the profits and monies due to the king within his county or bailiwick: sc. the king's rents, farms, debts, issues, amerciaments, fines and forfeitures.

(*o*) 2 Inst. 193.

(*q*) Dalt. 34. Cro. E. 9, 10. pl. 1.

(*p*) 3 Inst. c. 7. p. 52. H. H.

(*r*) 3 Inst. 161. 2 Inst. 193. Hob.

P. C. 433, 451, 456. Fost. Cr. Law, 62. 264.

(*s*) C. 5. p. 36.

" 3. To seize to the king's use the goods of felons attainted, and of fugitives, of persons outlawed, treasure trove, waifed goods, &c. deodands, estrays, wrecks of the sea, whales, escheats, wards, and lands of idiots.

" 4. Truly to accomplish and put in execution all manner of writs, process, judgments, executions, commandments and precepts, directed to him from any of the king's courts, which are to be executed within his county, duly to return all such writs, &c., to impanel jurors, and to return them.

" 5. To be attendant upon the judges in their circuits, &c., and to execute all their lawful commandments.

" 6. To assist the justices of peace in his county, &c.

" In some cases { " To join with them.
" To attend them.
" To execute their precepts.

" 7. To execute the precepts of commissioners of sewers, and other commissioners.

" 8. To execute the precepts of escheators and coroners.

" 9. To assist the ordinary in suppressing heresies.

" 10. Duly to keep his courts: sc.

His { " *Tourne*; in this the sheriff is a judge of record,
" and so hath a judicial power.
" *County* or *shire* court; which in some cases also
" is a court of record.

" 11. To proclaim certain statutes, &c.

" 12. To make purveyances for the king in some cases."

And all these the sheriff is to do his best endeavour for the keeping and preserving thereof, so far as belongs to his office(t).

To execute these various offices the sheriff has under him many inferior officers, *viz.* an *under-sheriff*, *bailiffs*, and *gaolers*, who must neither buy, sell, nor farm their offices, on forfeiture of 500*l*.

3 Geo. 1, c. 15.

The great expense which custom had introduced in serving the office of sheriff, having grown very burthensome, it was enacted,

Sheriff not to keep table at assizes. Number of his men, &c.
13 & 14 Car. 2. c. 21.

" That no sheriff should keep any table at the assizes, (except for his own family,) or give any presents to the judges or their servants, or have more than forty men in livery; yet, for the sake of safety and decency, he may not

(t) Staunf. 74, 5.

“ have less than twenty men in *England*, and twelve in
“ *Wales*, upon forfeiture of 200 *l*.”

This act not to extend to the sheriffs of *London* and *Middlesex*, the sheriff of *Westmorland*, or any sheriff of any city and county, or town and county.

1 W. 4. c. 70.
s. 33.

Sheriffs of *Wales* and the counties palatine directed to levy fines transmitted by the clerks of assizes, and to account as heretofore.

Of the *Under-Sheriff*.

Under-sheriff.

AS it is impossible the high sheriff can himself personally execute every branch and thing belonging to his office, and as the law, from the necessity of the thing, and in furtherance of justice, allows him to make a deputy ; hence it is necessary that such deputy should, in all things in which the high sheriff's personal presence is not required, have the same power with the sheriff himself ; and as by the nomination the sheriff implicitly confers on him a power of doing all such offices as he himself could execute, and which may be transferred by the law, it is likewise held, that the deputy's authority is by law so equal with the principal's, that any condition, covenant, or other bargain to restrain it is void ; and, therefore, it is now universally agreed, that the under-sheriff may make *bills of sale upon executions, assign bail-bonds, make returns to writs*, and, *in general, do every thing that the sheriff himself can do*, except when the personal presence of the high sheriff is necessary. He is appointed by deed, which is afterwards filed in the King's Remembrancer's-office in the Exchequer (*u*).

High sheriff
answerable.

The high sheriff, by law, is answerable for the conduct of his under-sheriff, yet he is not to be punished criminally for his acts, nor to be imprisoned, nor indicted for his misdemeanors (*x*).

Anciently ap-
pointed under-
sheriff. St. West.
1. 15.

It appears that the sheriff of ancient time had his under-sheriff (*y*).

Under-sheriff
called *sub-vice* ;
13 Ed. 1. c. 39.
c. 15.

In ancient time he was called *sub-vice comes*. And in 11 H. 7. he is called the *shire-clerk*, or the clerk of the county. And yet the word *shire-clerk* is sometimes taken to be the under-sheriff, sometimes for a clerk in the county-court, deputy to the under-sheriff (*z*).

(*u*) Hob. 12, 13. Salk. 95. (*y*) Hob. 13. 2 Inst. 191.
(*x*) Dalt. 3. Latch. 187, & 5 Pri. (*z*) 9 Co. 49. Dyer, 355. Dalt.
578. 455.

He may constitute him at his will, and remove him when he pleases. So, though he make him irrevocable, yet he may remove him at pleasure, for he is only his deputy. And it is said that he need not make an under-sheriff, for he may exercise the office himself. If he makes an under-sheriff, he may take a bond or covenant to indemnify him from escapes. But he cannot enable him to do a thing which the sheriff himself ought to do in person; as to execute a writ of waste, *redisseisin*, partition, dower, &c. For in all cases where the writ commands the sheriff to go in person, there the writ is his commission, from which he cannot deviate (a).

May remove him.

Need not make an under-sheriff. May take bond, &c. Cannot enable under-sheriff to do that which he is to do in person.

Before the new sheriff return any writ into the courts of *Chancery*, *King's Bench*, *Common Pleas*, or *Exchequer*, he ought to make and have an attorney, or deputy of record, there to receive all manner of writs and warrants to be delivered to them; and if any such sheriff shall do the contrary, he shall forfeit 40 *l.* to the king and informer for every such default, and treble damages to the party grieved.

Before the new sheriff return any new writ in *Chancery*, &c. to appoint deputy of record.

23 H. 6. c. 10.

Every sheriff shall make, and cause to be entered on record, a sufficient deputy, to receive all manner of writs and process, under the pains and penalties mentioned in the above statute; and that sheriffs or their deputies shall give their personal attendance in *Westminster-hall* in term time (b). Each deputy, yearly before *Hilary* term, have his name and place of his residence in *London* or *Westminster* set and continued up in tables in the office of the Prothonotary.

King's Bench order to appoint deputies.

Common Pleas order.

By an order in the court of *Exchequer*, all sheriffs shall assign their able attorney and deputy in that court, sitting the court, to attend the court and receive and return all writs, &c. And every sheriff, on his giving a recognizance, shall deliver to the clerk in the Remembrancer's office the name of the attorney or deputy assigned (c).

Exchequer order to appoint deputy.

Also every sheriff of every of the *twelve counties of Wales*, and of the *counties palatine of Lancaster*, *Chester* and *city of Chester*, shall have in every of the courts of *King's Bench* and *Common Pleas* one sufficient deputy, at the least, to receive all writs directed to such sheriff for

Sheriffs of Wales and counties palatine to appoint attorneys in the King's Court.

(a) Hob. 13, 14. 6 Co. 12. Dalt. 34. (b) E. 15 Car. 2. K. B. R. Jenk. 181. 2 Inst. 390. 4 Co. 65. M. 1654. C. P.

Dyer, 204. (c) Ord. & R. in Exq. R. 45. p. 20.

whom the same deputy or deputies shall be appointed, in like manner and form, and upon like pains, as by the laws and statutes of this realm other sheriffs of other shires within this realm of *England* be bound to have in either of the same courts.

23 H. 6. c. 9.
1 Ed. 6. c. 10.
5 Ed. 6. c. 26.

Notice to under-sheriff's agent.

Notice to an under-sheriff's agent in town is not evidence of notice to the sheriff in an action against him (*d*). But notice to the sheriff's attorney is equivalent to notice to his under-sheriff to produce warrants, &c., which have been returned to the under-sheriff (*e*).

Durham.

The *Bishop of Durham*, and, during the vacation of the said bishopric, the Chancellor of the said county palatine for the time being, shall have one sufficient deputy at least in the said courts of the *King's Bench* and *Common Pleas*, to receive all writs of proclamation directed to such *Bishop* or *Chancellor*, under penalty of 40 *l*.

31 El. c. 9.

Under-sheriff usually performs the office.

It has been already said that the under-sheriff usually performs all the duties of the office, a very few only excepted, where the personal presence of the high sheriff is necessary. And assignments by him under the seal of office, good; his acting as under-sheriff is sufficient evidence of his authority to execute all instruments necessary to be executed by the sheriff, without proof of such authority by deed (*f*). But no under-sheriff, nor sheriff's clerk, shall abide in his office above *one year*; and if he does, *he forfeits 200 l.*, a very large penalty in those earlier days, (except the under-sheriff and officers within *London*, (and *Bristol*, by 6 H. 8. c. 16.) and such as are heritable). And no under-sheriff or sheriff's officer shall practise as an attorney during the time he continues in such office. And by rule, *Mich. 1654, K. B.*, if he does, he is to be expelled from the employment of an attorney, and not to be re-admitted, for this would be a great inlet to partiality and oppression. But these salutary regulations are shamefully evaded, by practising in the names of other attorneys, and putting in sham deputies by way of nominal under-sheriffs; by reason of which, says *Dalton* (*g*), the under-sheriffs, sheriffs' clerks, and bailiffs, grow so cunning in their several places, that they are able to deceive, and it may well be feared that many of them do deceive, both the king, the high sheriff, and the county.

42 Ed. 3. c. 9.

23 H. 6. c. 7.

1 H. 5. c. 4.

(*d*) *Gibbon v. Coggon*, 2 Camp. 188.

(*f*) *Doe v. Brown*, 5 B. & A. 243. Hob. 13.

(*e*) *Taplin v. Att-Gen.* 3 Bing. 161.

(*g*) C. 115. p. 454.

By 3 G. 1. the following oath shall be taken by all under-sheriffs of any county or counties in *South Britain*, (except the counties of *Wales*, and county palatine of *Chester*;) before they enter upon the execution of their offices respectively : c. 15.

“ I, *A. B.* do swear, that I will well and truly serve the King’s Majesty in the office of under-sheriff of the county of and promote His Majesty’s profit in all things that belong to the crown : I will not assent to decrease, lessen, or conceal the king’s rights, or the rights of his franchises ; and whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again ; and if I may not do it of myself, I will certify and inform some of His Majesty’s judges thereof ; I will not respite or delay to levy the king’s debts for any gift, promise, reward or favour, when I may raise the same without great grievance to the debtors ; I will do right as well to poor as to rich, in all things belonging to my office ; I will do no wrong to any man for any gift, reward or promise, nor for favour or hatred ; I will disturb no man’s right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debt, duties, or sums of money belonging to the crown ; I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured, or delayed ; I will truly return and truly serve all the king’s writs to the best of my skill and knowledge ; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estates and circumstances ; and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm ; I have not bought, purchased, or taken to farm, or contracted for, promised, or given any consideration whatsoever, by myself, or any other person for me, or for my use, directly or indirectly, to any person or persons whatsoever, for the office of under-sheriff of the county of which I am now to enter upon and enjoy, nor for the profits of the same, nor for any bailiwick thereof, or any other place or office belonging thereunto ; I have not sold or contracted for, or let to farm, nor have I granted, or promised, for reward or benefit, by myself or any other person for me, or for my use, directly or indirectly, any bailiwick thereof, or any other place or office belonging thereunto ; I will truly and diligently execute the good laws and statutes of this realm ; and in all things well and truly behave my-

Oath of the under-sheriff.

“ self in my said office for His Majesty’s advantage, and
 “ for the good of his subjects, and discharge my whole
 “ duty according to the best of my skill and power. So
 “ *help me God.*”

How and by
 whom to be
 administered.

“ Which said oath is to be administered by such com-
 “ missioners as shall be named and authorized to admi-
 “ nister the foregoing oath to the high sheriff in the county,
 “ when and so often as a *commission* or *dedimus* shall be
 “ sued forth of the proper court for that purpose, or by
 “ the barons of the said court, or one of them, when the
 “ said sheriffs desire to be sworn in town.”

s. 11.

Must take the
 oaths of alle-
 giance.

Vid. supra

p 13.

27 El. c. 12. s. 2.

He was also required to take the oaths and declaration
 in the same manner as the high sheriff, and within the
 same time. And no under-sheriff shall intermeddle with
 his office before he hath also taken the said oath of
 office, or, in Wales, that mentioned in 27 El. c. 12,
 against corruption in impannelling juries, on pain to
 forfeit 40*l.*, one half to the queen and the other to the
 informer; to be sued for by bill, plaint, or information,
 in any of the queen’s courts.

Before this statute the under-sheriff was never sworn (*h*).

To have no es-
 tate or interest
 in the office.

The under-sheriff hath not, nor ought to have, any
 estate or interest in the office itself; neither may he do
 any thing in his own name (*i*), but only in the name of
 the high sheriff, who is answerable for him, because
 the writs are directed to the high sheriff.

Caution to she-
 riffs to take se-
 curity.

If (*k*) the high sheriff will *sleep quietly*, and take his
repose in safety, he shall do well and wisely to look for
 and to *take good security* from his under-sheriff before
 he do trust him with his office, which security is com-
 monly by bonds and covenants, taken by the high sheriff
 of the under-sheriff and his friends.

Condition of
 Bond.

- “ 1. To save the said high sheriff harmless.
- “ 2. To make account in the Exchequer, and procure
 the high sheriff’s discharge.
- “ 3. To return juries with the privity of the sheriff.
- “ 4. To execute no process of weight without the
 sheriff’s privity.
- “ 5. To accompt to the sheriff, and attend him.
- “ 6. To be ready to attend the sheriff.
- “ 7. For his good behaviour in his office.
- “ 8. To take or use no extortion.
- “ 9. To give attendance at the king’s court.”

(*h*) 1 Roll. R. 274. (*i*) Salk. 96. (*k*) Dalt. c. 2. p. 20.

The sheriffs of *London* have two secondaries, who act as under-sheriffs of *London*, and each sheriff hath an office wherein the business is transacted, the one called the *Poultry Compter*, the other the *Giltspur-street Compter*.

Secondaries of *London* are under-sheriffs.

They are the principal officers, and next to the sheriffs; and the business transacted by them is the granting of warrants on all writs issued from the courts above, impannelling juries to appear in those courts, and in the court of session, and attending the sheriffs when required.

The secondaries have purchased their places of the city of *London* from time immemorial.

No sheriff of *London* and *Middlesex* shall take any sum or present for the execution of the place of under-sheriff, nor oblige him to be at any expense in relation thereto which has been usually borne by the high sheriff, except the rewards given by any act for apprehending highwaymen, clippers, coiners, and housebreakers, and the fees for passing the high sheriff's accounts in the Exchequer, and such other disbursements as have been customarily sustained by the under-sheriff.

No sheriff of *London* to take presents of under-sheriffs.

5 Ann. c. 31.

Sheriffs and under-sheriffs shall receive all manner of writs in any place, and at all times, within their county, when and wheresoever they shall be delivered them, without taking of any thing other than such fees as the law alloweth, and shall make thereof warrant.

Sheriffs and under-sheriffs to make out warrants.

COUNTIES IN ENGLAND AND WALES.

IN ENGLAND 40.—Bedford; Berks; Bucks; Cambridge; Chester, *Co. Pal.*; Cornwall; Cumberland; Derby; Devon; Dorset; Durham, *Co. Pal.*; Essex; Gloucester; Hereford; Hertford; Huntingdon; Kent; Lancaster, *Co. Pal.*; Leicester, Lincoln; Middlesex; Monmouth; Norfolk; Northampton; Northumberland; Nottingham; Oxon; Rutland; Salop; Somerset; Stafford; Suffolk; Surrey; Sussex; Southampton; Warwick; Westmorland; Worcester; Wilts; York.

IN WALES, 12.—Anglesey; Brecon; Cardigan; Carmarthen; Caernarvon; Denbigh; Flint; Glamorgan; Merioneth; Montgomery; Pembroke; Radnor.

THE COUNTIES PALATINE.—Lancaster; Chester; Durham.

The CINQUE PORTS, 5.—Dover; Sandwich; Romney; Hastings and Hythe. To which Winchelsea and Rye are added.

In the time of *Edward* the Confessor there were but three ports, *Dover*, *Sandwich* and *Romney*; but in the time of *William* the Conqueror, *Hastings* and *Hythe* were added (*l*); and in 1 *John*, *Winchelsea* and *Rye*. The warden of the *Cinque Ports* is an officer, who has been appointed time out of mind, &c. for the custody of the ports (*m*). And he is constable of the castle of *Dover*. The constable of the castle of *Dover* executes all writs in the *Cinque Ports*.

Counties corporate.

There are also *counties corporate*, which are certain cities and towns, some with more, some with less territory annexed to them; to which, out of special grace and favour, the kings of *England* have granted to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that *no officers* of the county at large have any power to intermeddle therein. Such are the Cities of Bristol, Coventry, Chester, York, Gloucester, Lincoln, London and Norwich, having two sheriffs: Canterbury, Exeter, Litchfield and Worcester, one sheriff. Towns of Kingston-upon-Hull, Southampton, Nottingham, Poole, Newcastle-upon-Tyne, Haverfordwest and Carmarthen, one sheriff.

All actions for breach of duty of the office, to be brought against the sheriff, though by default of the under-sheriff.

If an action is brought for a breach of duty in the office of sheriff, the action must be brought against the high sheriff as for an act done by him, *and not against the under-sheriff*; and if it proceeds from a fault of the under-sheriff, or bailiff, that is a matter to be settled between them and the high sheriff (*n*).

Writs delivered now to the under-sheriff, who makes out the warrants.

All writs and process directed to the sheriff are usually delivered to the under-sheriff, to make out warrants thereon to the bailiff, in the high sheriff's name; or he may make out such warrant to any stranger.

A writ of *ca. sa.* into a county palatine should command the chamberlain, that, by the king's writ, under the great seal of the county palatine, he the chamberlain should command the sheriff to take, &c. and not command the chamberlain to take, &c. which has been held bad (*o*).

(*l*) 4 Inst. 222. 2 Inst. 556. (*m*) 4 Inst. 223.

(*n*) *Cameron v. Reynolds*, Cowp. 403.

(*o*) *Bracebridge v. Johnson*, 1 Br. & Bing. 12.

So an *alias capias* directed to the sheriffs of the city of *Chester*, and county of the same city (*p*).

If the sheriff make an under-sheriff, of necessary consequence he gives him power to make bailiffs and precepts, without acquainting him therewith, and this he can do by virtue of his deputation (*q*); for he cannot abridge him of his power, no more than the king can the sheriff himself (*r*).

If a writ be subtracted by a sheriff's deputy, it is said the deputy himself may be punished (*s*), unless bailed; then he may give an extract for the purpose of putting in bail.

Not to grant an extract of writ till bailed.

Bailiffs.

IT is impossible for the high sheriff and under-sheriff to execute all writs and process directed to them; therefore the high sheriff may, for that purpose, empower a *bailiff* in each hundred to execute such writs, and, if he pleases, may appoint a *special bailiff* on any certain occasion; and he may take security from them, as he is answerable for their acts. But he cannot abridge them of their power (*t*).

High sheriff may appoint bailiffs to execute warrants.

The officers of the sheriffs are of three kinds; first, *bailiffs in fee*, or *perpetual bailiffs*, who have by charter or prescription the execution of writs within the guildable; secondly, *common bailiffs*, who are usually bound with sureties to the sheriff in an obligation for the due execution of their office, and thence are called *bound bailiffs*; thirdly, *special bailiffs*, nominated by the plaintiff or his attorney, and appointed by sheriff, *pro hac vice* (*u*).

Bailiffs or *sheriff's officers* are either *bailiffs of hundreds*, or *special bailiffs*. *Bailiffs of hundreds* are officers appointed over those respective districts by the sheriffs, to collect fines, to summon juries, to attend the judges and justices at the assizes and quarter sessions, and also to execute writs and process in the several hundreds. But as these are generally plain men, and not thoroughly skilful in this latter part of their office, that of serving

Bailiffs.

(*p*) Bradshaw v. Davis, 1 Ch. R. 374.

(*s*) Leon. 146. pl. 203. Cro. El. 175. pl. 1.

(*q*) 12 Mod. 468.

(*t*) Dalt. 103. Keilw. 86. Stil. 18. 2 Brownl. 283.

(*r*) 2 Brownl. 281. Hob. 13. Cro. El. 440.

(*u*) Tidd. 93. Dalt. 185, 187. 2 Bl. Rep. 952. 4 T. R. 129.

writs and making arrests and executions, it is now usual to join *special bailiffs* with them (*x*). The sheriff being answerable for the misdemeanors of these bailiffs, they are therefore usually bound in an obligation for the due execution of their office, and thence are called bound bailiffs. It has been repeatedly held, that if a special bailiff be appointed on the nomination of the plaintiff, the plaintiff must take the consequence of the acts of his bailiff. But where the sheriff of Cumberland (who has no bound bailiffs) was ruled to return the writ, the party had been arrested by plaintiff's special bailiffs, and afterwards rendered into custody, being also in the sheriff's custody at suit of a third person, upon whose debt being satisfied, the court held it to be the sheriff's duty to inquire if there were any other detainers against him before he permitted him to be discharged (*y*). For the court has considered them as the acts of the plaintiff himself, and has refused to call on the sheriff to return the writ in such cases (*z*). The mere indorsement of the officer's name on the writ is not evidence of his authority from the sheriff (*a*); and if the officer be called, he is a witness for all purposes, though, in fact, the real party in the cause. But it is sufficient to connect him with the bailiff to produce the writ with his name indorsed upon it without the warrant, and showing it to be the custom to indorse the name of the officer executing it (*b*).

Serjeant at
mace for Lon-
don to execute
process.

There are thirty-six serjeants at mace in *London*, who may be termed bailiffs, for they execute all warrants granted by the sheriffs on mesne process and executions in *London*, and perform the same business as bailiffs. These serjeants at mace have each a yeoman, to attend them on the execution of process, &c. and each serjeant gives 800*l.* security to the sheriffs for the faithful discharge of his office.

Sheriffs
answerable.

But for that sheriffs may not let their bailiwick to farm, therefore when they put in bailiffs they be but as under bailiffs to the king, and the sheriff is the high bailiff, and the other the sheriff's servants, and therefore he shall answer for them if they offend in their office (*c*).

(*x*) 1 Bl. Comm. 345.

(*y*) Taylor v. Richardson, 8 T. R. 505. 2 Esp. N. P. 591. 2 Bl. 952. 4 T. R. 119.

(*z*) De Moranda v. Dunkin, 4 T. R. 120. S. P. in C. P. Hamilton

v. Daziel, Hil. 1774. Clarke v. Palmer, 9 B. & Cr. 153.

(*a*) Hill v. Sh. of Midd. 7 Taunt. 8.

(*b*) Morgan v. Bridges, 2 Stark. N. P.

315. Tealby v. Gascoigne, Id. 202.

(*c*) Doct. & St. 136.

By 14 *Ed. 3.* sheriffs shall appoint such bailiffs for whom they will answer. No sheriff's bailiff shall be attorney in the king's courts during the time he is in office (*c*). c. 9.
Must not be an attorney.
1. H. 5. c. 4.

The sheriff's bailiffs are to take the oaths appointed by stat. 27 *El.*; they are to be sworn to the supremacy, and for the exercise of their office, under the penalty of 40*l.*, and if they commit any act contrary to their oath, they shall lose treble damages. Bailiffs to take oaths, &c.
c. 12.

No sheriff's officer, bailiff, or other person concerned in the execution of process, shall be permitted to be bail in any action (*d*). Nor shall they exact from any person in their custody by arrest, any warrant of attorney to acknowledge a judgment but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto, upon pain of being severely punished (*e*). Not to be bail in any action.
Nor take any warrant of attorney.

These rules are the same with respect to the keeper of the Poultry and the Marshalsea-court officers.

The Bailiff's Duty.

THE sheriff, or other officer, to whom any writ or warrant shall be directed and delivered, ought with all speed and secrecy to execute his said writ or warrant, according as the same commands him: besides, he is bound to pursue the effect of his warrant, in every behalf, otherwise his warrant will not excuse him. Bailiff's duty.

A sworn and known officer, (be he sheriff, under-sheriff, bailiff or serjeant), need not show his warrant or writ when he comes to serve it upon any man's person or goods, although the party demands it: but a special bailiff, or other person, who is no sworn and known officer, must show their warrant to the party, if he demands it, or otherwise the party may make resistance, and need not obey it (*f*). And it behoves every bailiff to keep his warrant, so that he may justify the imprisonment (*g*). A sworn and known officer need not show his warrant.

21 H. 7. 23,
& 37; 8. E. 4.
14. 14 H. 7. 9.

Although a sworn and known officer need not show his warrant, yet upon the arrest he ought to declare the contents thereof, (*viz. at whose suit, for what cause, out of what court, and when returnable*), to the end that if it be He ought to declare the contents.

(*c*) R. M. 1654. K. B.

(*e*) R. E. 15 Car. 2. 1 Lill. Abr.

(*d*) R. M. 14 Geo. 2. 2 Str. 890.

114.

2 Bl. R. 799, Loft. 153.

(*f*) 9 Co. 69.

(*g*) 10 Co. 92.

upon an execution the party may pay the money, and so free his body from imprisonment; and, if it be upon mesne process, that the party may agree with the other, or else that he may put in sureties and bail for his appearance, according to law, and know the day of his appearance (*h*).

Who is a known bailiff.

Where our law-books or statutes do speak of a known bailiff or officer, they are not to be understood to mean that such bailiff or officer be known to the party who is to be arrested; but if he be so commonly known, it is sufficient.

Officer gives notice what he is, when he says, "I arrest you," &c.

And an officer gives notice what he is, when he says to the party, "*I arrest you in the king's name*"; and in such case, the party at his peril ought to obey him, though he knows him not to be an officer: if he have no lawful warrant the party may have his action.

If arrest made, and party flies, may pursue.

If the sheriff or officer comes to arrest a man, and he flies, the officer may pursue him, and take him again, though in another county, but may not beat, strike, or assault him, for that he was not arrested; but if he be arrested, and then flies, and draws any weapon, the officer may justify the assault, and taking him again.

2 E. 4. 7.

If he arrests without warrant.

If any officer arrests a man before he hath a warrant, and afterwards procures one (or a warrant comes after him) to arrest the party for the same cause, yet the first arrest was wrongful, and the party may have his action (*i*).

Bailiff of a hundred, bailiff all the county over.

A bailiff of a hundred may execute a writ out of the hundred where he is bailiff, for he is bailiff all the county over (*k*).

Arrest may be by authority of bailiff.

An arrest may be by authority of the bailiff, but he need not be the hand that arrests, nor in sight, nor within any precise *distance* of the defendant: it is sufficient that he be arrested (*l*).

Must, as soon as he executes his warrant, give an answer.

The bailiff, as soon as he has executed the warrant, must give the sheriff an answer to the same, so that he may be ready to certify to the court how and in what manner the same hath been executed, if called on; that is, he should forthwith return his warrant into the office of the sheriff.

Agreement to put in good bail to the bailiff bad.

An agreement in writing to put in good bail for a person arrested on mesne process at the return of the writ,

(*h*) 9 Co. 68, 69, 6 Co. 54.

(*i*) Brown, 8.

(*k*) Lill. Abr. 266.

(*l*) Black v. Archer, Cowp. 65.

or surrender the body, or pay debt and costs, made by a third person with the bailiff of the sheriff, in consideration of his discharging the party arrested, is void by statute 23 H. 6. (m). The security must be in the particular form marked out by the statute. 23 H. 6. c. 10.

A bailiff of a hundred is not to enter a liberty without a warrant on a *non omittas* (which may be issued in the first instance), for the lord may have his action on the case against him. He may enter on a *quo minus* out of the Exchequer, or wheresoever the king is a party: for where the king is a party no franchise shall be allowed. Every writ for the king is a *non omittas* in law of itself (n).

Not to enter a liberty, without a *non omittas*.

As bailiffs are officers who are to execute the king's writs, they must be cautious how they act, because when they use needless force, violence and terror, in making an arrest, or where they break open doors, where by law they cannot, and have no plausible excuse for so doing; where they treat persons basely and inhumanly, or keep them in custody until they consent to pay money for their deliverance; or take money for taking bail, or for making an arrest without authority, by force of a blank warrant, filled up with the name of a special bailiff by the party himself, without the privity or subsequent agreement of the sheriff, &c. the court will grant an attachment (o). See *infra* title *Arrest*.

Caution to bailiffs how they execute writs, &c.

If any judicial writ or process in any court of record be awarded in the time of the precedent king, this, by stat. 1 Ed. 6. may be executed by the sheriff or his officer in the time of the succeeding prince, &c. (p).

32 Geo. 2. c. 28.

The office being one of trust and responsibility cannot be intrusted to an infant; and the service of a warrant by, held illegal (q).

If the king dies, yet he may execute his warrant, 1 Ed. 6. c. 7.

Infant cannot execute the office.

Of *Liberties* and *Franchises*.

FRANCHISE and *liberty* are used as synonymous terms, and their definition is a royal privilege or branch of the king's prerogative, subsisting in the hands of a subject. Being therefore derived from the crown, they must

Franchise derived from the crown.

(m) Rogers v. Reeves, 1 T. R. 418. 1064. 2 Roll. Abr. 278. Barnard, (n) 9 East. 330. Fitz. 95. Dalt. 187. 259, 296. 2 Burr. 926. 5 Rep. 92. Dalt. 463. 41 Ass. 17. (p) 7 Co. 30. 3 Dalt. 109. (o) Finch, 237. Hob. 62. 263, (q) Cuckson v. Winter. 2 M. & 264. Noy, 101. Moor, 770. pl. Ry. 313.

arise from the king's grant; or in some cases may be held by prescription, which presupposes a grant.

Who they may
be vested in.

They may be vested in natural persons, or bodies politic, in one man, or in many; but the same identical franchise that has been granted to one cannot be bestowed on another, for that would prejudice the former grant. The principal kinds of franchises are the following: to be a county palatine is a franchise vested in a number of persons: it is likewise a franchise in a number of persons to be incorporated and subsist as a body politic, with a power to maintain a perpetual succession, and do other corporate acts; and each individual member of such corporation is also said to have a franchise or freedom. Other franchises are, to hold a court-leet, to have a manor or lordship, &c.: to have a court of one's own: to have the cognizance of pleas: to have a bailiwick or liberty exempt from the sheriff of the county, wherein the grantee only and his officers are to execute all process.

Bailiff of a
liberty.

A *bailiff* of a *liberty* is one who hath the same jurisdiction with the sheriff's bailiff granted to him by the lord of a liberty or franchise.

The sheriff to
execute pro-
cess although
within a liberty
or franchise,
but he must
write or send
his precept to
the bailiff.

The sheriff being the immediate officer of the king and his court, to execute all writs and process, so to him all writs are directed, although it be of a matter or thing done *within a liberty or franchise*, in which case the sheriff must write or send his precept to the *bailiff of the liberty*, who must serve and execute the same, (as servant to the sheriff,) and make answer or return thereof *to the sheriff*; but the sheriff himself makes the return of the writ into court (r).

c. 29.

If the bailiff
give no an-
swer, then a
non omittas.

The stat. *West. 2*, enacts,

That if such bailiff gave no answer to the sheriffs, the court may grant a special warrant with a *non omittas*, which authorizes the sheriff to enter the franchise; for liberties must not be privileged to hinder or delay the general execution of justice; and if they or their ministers do neglect their duties, the superior courts may intermeddle, notwithstanding their privileges, to put the process in execution, that the law may receive no obstruction by them, which is done by issuing a writ with the clause of *non omittas*, which gives the sheriff power to enter not only that liberty, *but all the liberties within the county*.

But it is now settled that a writ of *capias*, with a *non omittas* clause, may issue in the first instance, and be executed by the sheriff within a particular liberty, without any prior writ and return of *mandavi ballivo qui nullum dedit responsum* (*s*).

If the bailiff of a liberty arrest the party and take bail, it is to be *in the name of the sheriff*, and he is to have the same fees as the sheriff and his officers (*t*).

Process directed in the first instance to the bailiff of a franchise is void, and the bailiff executing the same is guilty of a trespass. The writ must be directed to the sheriff of the county (*u*).

The bailiff of a franchise hath no authority *out* of the franchise (*x*).

By 27 H. 8. "the amercement for insufficient returns made by bailiffs of franchises shall be set on the bailiff's head, and not on the sheriff's;" or the plaintiff may have an action, if it be a false return, against the bailiff, the sheriff not being liable at common law for the false return of the bailiff.

If the sheriff return that he has made his mandate to the bailiff of the liberty, who has returned that he has taken the defendant, and has him ready, then the plaintiff may have a rule on him, the bailiff, to bring in the body on producing the return (*y*).

The bailiff of a liberty is to take the usual oaths (*z*).

All bailiffs and officers of liberties shall attend upon the justices of assize, justices of goal-delivery, and justices of peace of the same shire wherein such liberties and franchises be.

All lords that have franchises, or their bailiffs, shall attend upon the justices of assize and gaol-delivery, on pain of forfeiture of their franchises (*a*).

The sheriff ought not to make any other return but according to that which the bailiff of the liberty shall certify him (*b*). If he make no return at all, he may certify that he issued his mandate to the bailiff, who has made no answer.

(s) 9 East, 339.

(t) Dalt. 460.

(u) 3 East, 128. 1 T. & Br. 12.
1 Ch. R. 374.

(x) Finch. 54.

(y) 2 T. R. 5.

(z) Dalt. 459.

(a) Br. Forf. 115.

(b) Keilw. 3 G.

Non omittas may issue in the first instance, and be executed by the sheriff.

If bailiff of a liberty arrest, to take bail and

have fees: 23 H. 8, c. 10.

Writ must not be directed to the bailiff.

Bailiff no authority out of the franchise.

c. 24.

To be amerced for insufficient returns, and may be sued for a false return.

On return that the bailiff has the body, a rule may be made on him to bring in the body.

To take the usual oaths: 23 H. 6. c. 10.

To attend justices of assize, &c. 27 H. 8. c. 24.

So lords or their bailiffs of franchises: 20 Ed. 4, 6.

Sheriff not to make any other return than the bailiffs.

If sheriff enter without a *non omittas*, and execute writ, good.

The lord may have action, not the party.

If the sheriff, or his officers by his command, enter the franchise without a *non omittas*, and make execution of the king's writ, it is good; but the lord of the franchise may have his action against the sheriff or officer for the entry. But the party so taken shall have no remedy (c).

And no action can be supported by the bailiff of a liberty for wilfully and maliciously suing out a *capias* with a *non omittas* clause, in the first instance, where such a practice has long prevailed (d).

A bailiff executing a writ without the *non omittas* clause in a liberty is a trespasser, and if killed, it is only homicide (e).

Sheriff having once taken a party, though in a liberty, without any *non omittas* clause, is bound to keep him in custody (f).

Who is to claim a prison as a franchise.

If bailiff of a liberty dies.

None can claim a prison as a franchise unless they have also a gaol-delivery (g).

If the bailiff of a liberty dies after he has returned *cepi corpus*, a *distringas* issues against his successor, because he takes it up under the return of his predecessor (h).

Bailiff of a liberty liable to action of debt for an escape.

The bailiff of a liberty who has the return and execution of writs is liable to an action of debt for an escape if he remove a prisoner taken in execution to the county gaol, situate out of the liberty, and there deliver him to the sheriff's custody. The sheriff is discharged when he returns that he has commanded the bailiff, and returns the bailiff's answer; and after such return the bailiff must be ruled to bring in the body, and not the sheriff (i).

To certify names of prisoners at assizes, &c.
3 H. 7. c. 3.

Bailiffs of franchises having authority of keeping gaols in their liberty, shall certify the names of the prisoners in their keeping at the next general gaol-delivery in that county of franchise (k).

Gaolers.

Gaolers are also the servants of the sheriff, and he must be responsible for their conduct. Their business is to keep safely all persons as are committed to them by lawful warrant; and if they suffer any such to escape, the sheriff shall

(c) Fitz. 95, 6. Dalt. 464.

(d) Carrett v. Smallpage, 9 E. R. 330.

(e) R. v. Mead, 2 Stark. 205.

(f) Piggott v. Wilkes, 3 B. & A. 502.

(g) Salk. 343.

(h) Gilb. C. P. 31.

(i) 2 T. R. 5.

(k) Dalt. 465.

answer it to the king, if it be a criminal matter; or, in a civil case, to the party injured (*l*).

By 14 *E.* 3.

“ The gaols shall be rejoined to the sheriffs, and the sheriffs shall have the custody of the same as before; and they shall put in keepers, for whom they shall answer.

c. 10.

Sheriffs to have the custody of gaols. 13 R. 2. c. 15.

By 19 *H.* 7.

“ Every sheriff shall have the custody of the king’s common gaols in the county where he is sheriff, *except gaols whereof any person, or body corporate, have the keeping of estate of inheritance.* Provided that no sheriff have the custody of the King’s Bench and Marshalsea.”

c. 10.

To have custody of gaols in the county, except, &c.

Every county hath two sorts of gaols, one for prisoners by the sheriff taken for debt, and this the sheriff may appoint in any house, or where he pleases; the other is for breach of the peace and matter of the crown, which is the county gaol (*m*).

Every county two gaols.

By the 22 and 23 *Car.* 2.

c. 20. s. 13.

“ It shall not be lawful for any sheriff or gaoler to lodge prisoners for debt and felons together in one room, but they shall be kept a part, upon pain that they that offend against this act shall forfeit their office and treble damages to the party grieved.”

Prisoners for debt and felons not to be together.

By the 1 *Ann.* those taken on an escape-warrant are to be sent to the county gaol.

c. 6.

Escape prisoners.

Though the sheriff may move his gaol from one place to another within his bailiwick, yet he must keep it and his prisoners within it, and not suffer them to go at large out of the prison, though he himself attends them (*n*).

Sheriffs must keep their prisoners in gaols.

By 32 *G.* 2. power is given to the lord chief justices of the K. B., C. P., and the lord chief baron of the Exchequer, or any two of them, with the mayor and two aldermen, or with three aldermen of *London* without the mayor, for the prisons within the said city; and the said lord chief justices and chief baron, or any two of them, with three justices of peace of the counties of *Middlesex* and *Surrey* respectively, for the prisons in the said counties respectively, to settle a table of fees to be taken by any gaoler in *London*, or in *Middlesex* and *Surrey*, where the same is not established; and where established to vary

c. 28. s. 5. Power given to settle table of fees for gaolers.

(*l*) 4 Rep. 31. 2 Inst. 592.

(*m*) Latch 16. 1 And. 345.

(*n*) Hob. 202. Latch, 16. 1 Sid.

318.

same as requires. And the justices of every other county and place, for the prisons of each county, are, at any general or quarter session of the peace, to settle a table of fees, and to alter the same; which table of fees shall be signed by them. And the table of fees for the prisons, (except *London, Middlesex and Surrey*,) shall be confirmed and moderated by the justices of assize; and if within *Wales* or *Chester*, by the justices of great sessions, at the next assizes or great sessions next after the making or altering such table of fees.

Gaolers to cause them to be hung up in public room.

Free resort to them in the day-time.

32 Geo. 2. c. 28.
s. 10.

s. 12.

Gaols for safe custody, and not for punishment of debtors, and prisoners ought to be used with humanity.

Prisoners not to be put in irons except in certain cases.

c. 46.

Gaolers shall forthwith after the receipt thereof, or rules made for the better government of the prisons in *England*, cause the same to be hung up in some public room or place, and in a conspicuous manner, in his prison; and it shall be incumbent on such gaoler to take care the same be kept up there, so as the prisoners may have free resort thereto, at seasonable times in the day-time, without paying any thing for the same. And also a table of gifts and legacies (when transmitted) shall forthwith be hung up by the gaoler, in a conspicuous manner, in some public place in his prison, and where the prisoners may have free resort thereto, without fee. And no keeper shall take of any prisoner for debt, damages, costs, or contempt, any greater fees, on forfeiture to the party grieved 50*l.* with treble costs, by action of debt, &c. in any court of record at *Westminster*.

Gaols are for safe custody, and not for punishment, (unless on the criminal side), therefore prisoners ought to be used with the utmost humanity, and not subjected to other hardships than such as are absolutely requisite for the purpose of confinement only; nor should any prisoner be put in irons but such as have been apprehended for felony or trespasses committed in parks or vineries, and those who have been found in arrear upon account, except the prisoner be unruly, and the officer hath just reason to fear an escape (*o*).

A Secretary of State may commit to safe and *close* custody; a justice can only commit to safe custody; and the 31 *G.* 3, giving justices a power of visiting gaols, does not authorize them to visit prisoners committed to *close* custody by the Secretary of State (*p*).

(*o*) Britton, c. 11. s. 5. 2 Inst. 316, 381. 3 Inst. 34.

(*p*) *Rex v. Eastaff*, 1 Gow. N. P. R. 138.

If a prisoner's death be owing to cruel and oppressive usage on the part of the gaoler, or any officer of his, it will be deemed wilful murder in the party guilty; therefore, if a prisoner dies, whether by disease or accident, the coroner is to take inquisition of the death, and the gaoler must give notice to the coroner of such death.

If death be owing to cruelty.

A gaoler knowing that a prisoner infected with the small-pox lodged in a certain room in the prison, confined another prisoner against his will in the same room. The second prisoner, who had not had the distemper, of which the gaoler had notice, caught the distemper, and died of it; this was held murder in the gaoler (*q*).

What is deemed murder.

A gaoler cannot receive any person on the civil side without the officer's warrant to detain him; and if he refuse to take him, and the prisoner escape, the gaoler shall not only answer the debt, (in case the sheriff is obliged to pay,) but be fined for such refusal.

Gaoler cannot receive any person on the civil side without warrant: 4 Ed. 3. c. 10.

If one in prison for a debt make an escape, the gaoler, &c. may take him again (*r*).

If escape, gaoler may retake.

Gaolers cannot take obligations from their prisoners, to be true, for enlargement, or meat and drink; if they do, such obligations are void (*s*); for the gaoler is in a manner bound to find victuals for his prisoners.

Gaoler not to take bonds of prisoners.

As the gaoler is but the sheriff's servant, therefore he may discharge him at his pleasure; and if he refuses to surrender up or quit possession of the gaol, the sheriff may turn him out by force, as he may any private person; also they are each of them so far under the regulation of the court of King's Bench that they will compel the sheriff to assign prisoners, &c. and gaolers to surrender up gaols, &c. (*t*).

Sheriffs may discharge gaoler at pleasure.

If the sheriff's gaoler suffer a prisoner to escape, the action must be brought against the sheriff, not against the gaoler; for an escape out of the gaoler's custody is, by indentment of law, an escape out of the sheriff's custody (*u*).

If gaoler suffers escape, action to be brought against the sheriff.

Where actions for escapes are said to lie against gaolers, such absolute gaolers are intended as writs are directed to; yet it hath been holden by *Holt*, C. J. that an action lies for a voluntary escape against the gaoler, as well as against the sheriff, it being in nature of a rescue (*x*).

When actions are said to lie against gaolers, mean gaolers absolute, to whom writs are directed.

(*q*) 2 Str. 856.

(*t*) Reg. 29.

(*r*) 3 Co. 44, 52.

(*u*) 2 Lev. 159. 2 Jon. 62. 2

(*s*) 10 Co. 100. b. Plowd. 68 Mod. 124. 5 Mod. 414, 416.

(*x*) 2 Salk. 441. 3 Ib. 18.

2 Co. 17. b.

Punishment.
c. 15. s. 10.

The 3 *G.* 1. directs how gaolers shall be punished for buying, selling, or farming their offices.

Liable to be attached for gross misbehaviour, or for not obeying rules of court and writs.

They are not only punishable by attachment, as all other officers are, by the courts to which they more immediately belong, for any gross misbehaviour in their offices, or contempts of the rules of such courts, but they are also punishable by any other courts for disobeying writs of *habeas corpus* awarded by such courts, and not bringing up the prisoner at the day prefixed by such writs (*y*).

Victuals.
c. 22. s. 16.

And the 2 *G.* 2. inflicts a penalty of 50*l.* on the gaoler for not permitting prisoners to send for victuals from what place they please, or to have such bedding as they think fit.

Rent.
c. 16. s. 14.

And by the 8 & 9 *W.* 3. no prisoner shall be compellable to pay rent for any chamber in any prison for any longer time than he shall be in possession thereof, nor to pay above 2 s. 6*d.* a week for such chamber, under the penalty of 20*l.*

c. 44. s. 6.

A gaoler detaining a party under a magistrate's warrant is within the protection of the words "other officer," in 24 *G.* 2. without reference to the legality of the warrant (*z*).

Arrest on Mesne Process.

Definition of the word arrest.

ARREST in common law is the apprehending or restraining of one's person, in execution of the command of some court, or officer of justice.

When said to be arrested.

When a person is legally stopped, apprehended, and restrained of his liberty for debt, &c., he is said to be arrested, or put under an arrest; which is the beginning of imprisonment.

None to be arrested for debt but by a precept or warrant.
The king cannot command any one by word of mouth to be arrested.
Nor can he

None shall be arrested for debt, trespass, &c. or other cause of action, but by virtue of a precept or commandment of some court; but for *treason*, *felony*, or *breach of the peace*, a man may arrest without *precept or warrant* (*a*). The king cannot command any one by word of mouth to be arrested for a debt, but he must do it by writ, or order of his courts, according to law; nor may the king arrest any man for suspicion of *treason* or *felony*, as his

(*y*) 2 Haw. Pl. Cr. 151. s. 31.

(*z*) *Butt v. Newman*, 1 Gow. N. P. R. 97.

(*a*) *Terms de Ley*, 54.

subjects may, because if he doth wrong, the party cannot have an action against him (*b*). himself arrest for felony, and why.

An arrest may be made without warrant, where there are circumstances forming a sufficient presumption of the party's guilt (*c*). Where a misdemeanor has been committed, an officer executing process cannot justify breaking doors until after a demand of admittance. So even in executing a criminal process (*d*).

An arrest must be "*by corporal seizing or touching the defendant's body*;" after which the bailiff may justify breaking open the house in which he is, to take him: otherwise he has no such power, but must watch his opportunity to arrest him. For every man's house is looked upon by the law to be his *castle of defence*, and *asylum*, wherein he should suffer no violence (*e*). If told to follow the officer, but who never touched him, held no arrest (*f*). So where notice only sent to apprise the party of the writ by the officer (*g*). How an arrest must be. Every man's house is his castle, therefore cannot break open outer door.

It is said, however, in some cases, that an actual touch is not necessary to constitute an arrest, as if a man be locked up in a room, that will be sufficient, he being then in custody (*h*). Need not in all cases touch the party.

But a mere suspicion that the party is secreted in an inner room of the house of a stranger is no justification for breaking inner doors to search. But otherwise when the goods are within the room (*i*).

And the distinction is, between the house of the defendant and of a stranger, in the former case he may justify an entry to look for the goods, but in the latter it is at his peril whether the goods be found there or not, if they be not, he is a trespasser. An administrator cannot be considered as a stranger (*j*).

So where the officer executing mesne process had gained peaceable possession of the outer door, and found the chamber door firmly secured, held that he was justified in

(*b*) 2 Inst. 186.

(*c*) Guppy v. Brittlebank, 5 Pri.

525.

(*d*) Lannock v. Brown, 2 B. & A. 592. Burdett v. Abbott, 14 East, 163.

(*e*) 5 Co. 91. 3 Inst. 162. Dalt. 310. 6 Mod. 105. 1 Salk. 79.

(*f*) 1 Ry. & M. 26.

(*g*) Arrowsmith v. Le Mesurier, 2 N. R. 211. n.

(*h*) Berry v. Adamson, 6 B. & Cr. 528.

(*i*) Johnson v. Leigh, 6 Taunt. 246. Hutchinson v. Birch, 4 Taunt.

627.

(*j*) Cooke v. Birt, 5 Taunt. 765.

gaining admission by breaking through an outer back window, having first told the defendant he had process to serve (*k*).

When he breaks open the house.

If a bailiff lays hold of him by the hand (whom he hath a warrant to arrest) as he holds it out of the window, this is such a taking of him that the bailiff may justify the breaking open the house to carry him away (*l*).

Sheriff bound to execute process out of a court of competent jurisdiction, though erroneous.

A sheriff is bound to execute process issuing out of a court of competent jurisdiction; and though there be no cause of action, or the process is erroneous, he is not responsible: the plaintiff himself, in such cases, is liable to an action for maliciously holding to bail. "It would be extremely hard indeed upon a sheriff or his officers if they were bound to inquire into the truth of an exemption, and determine upon it at their peril." Per *Ashhurst*, J. (*m*). But the service can only be within his own bailiwick, or it will be set aside, unless on the boundaries (*n*).

When a bailiff may break open door of a lodger.

A bailiff may, in execution of mesne process, break open the door of a lodger, having first gained *peaceable entrance at the outer door* of the house, and having demanded admittance at the inner door (*o*). But a door at the top of a staircase opening into a stable-yard may not be broken open (*p*).

Cannot break an outer door.

The sheriff cannot break an *outer door* to arrest the defendant on *mesne process* or *execution* (*q*).

On a *capias*, &c. at suit of a common person, cannot break open house of defendant.

And upon a *capias*, &c. or other process, at the suit of a common person, the sheriff, after request to open the doors, and denial, cannot break the house of the defendant, and in such case the sheriff would be a trespasser, though the execution would be good (*r*).

If door be open, and bailiff comes and shows process, and offers to enter, and owner

And yet, if the door be open, and the sheriff or bailiff come to the house, and shows the king's process, and offers to enter to execute the same, (being at the suit of any subject), and the *owner* shuts the door against the sheriff, &c., here the officer, "*giving notice of the cause*

(*k*) *Lloyd v. Sandilands*, 2 B. Moore, 207.

(*p*) 1 Esp. 99.

(*l*) 1 Vent. 306.

(*q*) Cro. El. 908.

(*m*) *Tarlton v. Fisher*, Doug. 676.

(*r*) 5 Co. 92. b. Cro. El. 909.

(*n*) *Hammond v. Taylor*, 3 B. & Al. 408.

Moor, 668. Yelv. 28. March, 4. Cro. Car. 537. 1 Jon. 430. 1

(*o*) *Lee v. Gansell*, Cowp. 1; 2 B. & P. 223.

Bulstr. 46.

"of his coming, and requesting to have the doors open," may break open the house, if the party refuses to open the door (s).

shuts door, officer gives notice, &c. may enter.

The sheriff's officers, on mesne process, came to the house where the defendant lodged, and knocked at the door, whereupon the house-keeper's wife came to the door and opened it a little to see who was there, and the bailiffs presently, with their swords drawn, rushed in by force, and went up to the chamber-door where the defendant lay, broke it open, and hurt divers in the house. Held, that the entry was unlawful, for the opening of the door was occasioned by craft, and their entering in was by violence, for which they were all fined (t).

Cannot enter with swords drawn, &c.

Or by craft.

The privilege of a man's house only extends to the owner, and shall not protect any person who flies thither, nor the goods of any person conveyed, to prevent any lawful execution, or to escape the ordinary process of law. And therefore if the sheriff, having process against a stranger, do desire to have the door opened, or to have the body of the party flying thither, after such request, if denial or refusal be made, or that it be not done, then the sheriff or his officers may break open the house, and execute the process without any danger of law (u).

The privilege of a man's house extends to the owner only, and not to a stranger. Therefore, if stranger fly into the house, the bailiff may enter, &c.

But, notwithstanding the general rule that the sheriff cannot break the outer door to arrest at the suit of the subject, yet in all cases, it is said, where the king is party, if the door be not open, the sheriff may break the door of the party, either to take him, or to execute the process, if he cannot otherwise enter therein; but, before such entry, he ought "to signify the cause of his coming, and make request that the doors may be opened" (v).

In all cases where the king is party, he may break open the doors; but he must first signify the cause: 13 E. 4. 9.

So, upon a *cap. utl.*, though on mesne process, and at the suit of a subject, the officers may break open any outward doors, *after demand and refusal* (w).

Capias utlagatum, though on mesne process.

And in all cases where the king hath any interest, the writ is *quod non omittas propter aliquam libertatem*; and therefore the privilege of any man's house will not hold against the king (x).

And in all cases where the king hath interest may enter.

(s) 5 Co. 91. Dalt. 351.

(v) 4 Co. 91. Fitz. Barr. 110.

(t) Dalt. 528. Waterhouse v.

Br. Exec. 100.

Saltmarsh, Hob. 263, 264.

(w) 2 Show. 87. R. v. Birn,

19 Vin. Abr. 433.

(u) 5 Co. 93.

(x) Dalt. 350.

If he enters, and owner locks him in, sheriff may enter to release. Locking in bailiffs, court will grant an attachment.

If one escapes after arrest, may break open.

Cannot break in at windows.

If resisted, and the party making resistance is killed, justifiable in the officer. Murder to kill the officer. If defendant flies, and is pursued, and in the pursuit, officer kills him, murder.

Arrest in the night, as well as day, lawful.

After an arrest on mesne process, bailiff may let prisoner go, provided he has him at the return of writ.

If the sheriff's bailiffs enter the house, the door being open, and the owner locks them in, the sheriff may justify breaking open the door for the enlarging and setting at liberty the bailiffs; also, it seems that in this case the locking in the bailiffs is such a disturbance to the execution that the Court will grant an attachment for it (*y*).

So, if one be arrested, and after escapes into his house, the sheriffs may break open the doors to take him: as where one opened his casement, and the sheriff took him by the hand (*z*).

A bailiff cannot break in to arrest at the window of a house, for windows and outer doors are intended for security of the house against persons from without endeavouring to break in (*a*).

Where persons having authority to arrest or imprison, using the proper means for that purpose, are resisted in so doing, and the party making resistance is killed in the struggle, this homicide is justifiable. And, on the other hand, if the party having authority to arrest or imprison, using the proper means, happen to be killed, it will be murder in all who take a part in such resistance; but if a defendant, in a civil suit, being apprehensive of an arrest, flieth, the officer pursueth, and in the pursuit killeth him, this, saith *Lord Hale*, will be murder (*b*).

An arrest in the night, as well as in the day, is lawful, and as well at the suit of a subject as at the king's; for the officer or minister of justice ought to arrest him when he can find him, for otherwise, perhaps, he will never arrest him (*c*).

After an arrest on *mesne process*, the bailiff may suffer the prisoner to go at large, provided he has him at the return of the writ. But it is otherwise on an *execution*, for if he *voluntarily* permits him to go, though only for a minute, he cannot afterwards retake him (*d*).

False imprisonment will not lie for such a recaption (*e*).

(*y*) Cro. Jac. 555. 1 Roll. R. 132. White v. Whitshire, Palm. 52.
(*z*) 1 Roll. R. 138. Palm. 54.
6 Mod. 173.

(*a*) Foster's C. L. c. 8. s. 20.

(*b*) Hale P. C. 481.

(*c*) 8 Co. 37, b. Salk. 322. pl. 8. 6 Mod. 130.

(*d*) 2 T. R. 176, 7. Atkinson v. Mattison, and see 7 T. R. 109.

(*e*) 1 Salk. 408. Noy, 72.

He cannot arrest *after* the return-day, either by *original* or *bill* (*f*); and although he have the party in custody the day after, the plaintiff in an action for not arresting will be entitled to damages (*g*).

Cannot arrest after return of writ.

In an action of false imprisonment against an officer, the question of probable cause for apprehending is a question of law, and cannot be left to a jury (*h*).

Of the Warrant on the Writ.

Although all writs and process are directed to the sheriffs of the different counties, yet he never executes the same himself, but his under-sheriff usually makes his warrant to his *bailiffs* or *officers*, for the execution of such writs.

Sheriff never executes himself, but grants warrants.

And these warrants must be made according to the nature of the writ, and contain the *substance* thereof, and be made out in the high sheriff's name, and *under the seal of office*.

Warrants must be according to the writs, and made in name of high sheriff.

By 6 *Geo.* 1. no high sheriff, under-sheriff, their deputies or agents, shall make out any warrant before they have in their custody the writs upon which such warrants ought to issue, on forfeiture of 10*l.* And every warrant to be made out upon any writ out of the King's Bench, Common Pleas, or Exchequer, *before judgment*, to arrest any person, shall have the same day and year set down thereon as shall be set down on the writ itself, under forfeiture of 10*l.*, to be paid by the person who shall fill up or deliver out such warrant.

c. 25. s. 53. No warrant to be made out without the writ. And all warrants to have day and year set down.

By 2 *Geo.* 2. every *warrant* that shall be made out on any writ, process, or execution, shall, before the service or execution thereof, be *subscribed or indorsed with the name* of the *attorney, clerk in court, or solicitor*, by whom such process, &c. shall be sued forth. But the not subscribing or indorsing the name on any warrant made on any writ, &c., shall not vitiate the same, but such writ shall be valid and effectual, provided the writ whereon such warrant is made out be regularly subscribed or indorsed; and every sheriff or other officer who shall make out any warrant upon any writ, process, or execution, and shall not subscribe or indorse the name of the attorney, clerk in court, or solicitor, who sued out

s. 54.

c. 23. s. 22. Every warrant shall have name of attorney subscribed. But the not doing of it, not to vitiate same.

If writ be not subscribed.

(*f*) Cro. El. 760. pl. 33. 1 Lev. 143. 1 Sid. 229. 1 Keb. 718. 805. 317. (*g*) Barker v. Green, 2 Bing. Moore, 701. pl. 998, and 2 Esp. 50. (*h*) Hill v. Yates, 2 B. Moore, 50.

Forfeits 5*l.*

12 G. 2.
c. 12. s. 4.

Warrant be-
fore arrest.

Warrant in
K. B.

Warrant in
C. P.

Exchequer.

Chancery.

Need not be
shown unless
demanded.

Warrant, if
demanded,
should be
produced.

If warrant is
altered.

If demand is
made, he
must show.

If directed to
two, one may
execute.

If to four,
or three.

the same, shall forfeit 5*l.*, to be assessed as a fine by the Court out of which such writ, &c. shall issue; one moiety to His Majesty, and the other to the person aggrieved. See 12 *Geo. 2. c. 12. s. 4.*

The warrant must be had *before the arrest*, or the arrest will be illegal, and the party grieved may have his action for false imprisonment, and the Court will direct the bail-bond to be cancelled (*i*).

If the writ be sued out of the court of King's Bench, then the warrant must be,

"So that I may have his body before the lord the king," &c,

If out of the Common Pleas, then it must be,

"Before the justices of the lord the king," &c.

If out of the Exchequer, then,

"Before the king's barons of his Exchequer," &c.

If out of Chancery,

"Before the king in his court of Chancery, on," &c.

These warrants need not be shown unless demanded, nor before the defendant peaceably submits to the arrest (*k*), provided the bailiff is a known bailiff; but a special bailiff must show his warrant.

It is very important that, in all cases where an arrest is made by virtue of a warrant, the warrant (if demanded at least) should be produced (*l*).

And if a name is *inserted afterwards by the bailiff* in the warrant, such warrant is *illegal*, and the arrest void (*m*).

If the demand is made, he must then show his authority, because the party may free himself by payment of the debt, or agree with the plaintiff, or put in bail for his appearance (*n*).

If a warrant be directed to two men jointly, to arrest another, yet either of them alone may do it. If directed to four or three jointly or severally, yet two may arrest him, because it is for the execution of justice (*o*).

Sunday.

Sunday.

Service of process or arrest on *Sunday* is absolutely

(*i*) 4 Bac. Abr 452. Hall v. Roche, 8 T. R. 187. (*n*) Cro. Jac. 485, 486. Co. of Rutland's case.

(*k*) Cro. Jac. 485, 486.

(*o*) Co. Litt. 181. 2 Rol. R. 137.

(*l*) Hall v. Roche, 8 T. R. 188.

(*m*) Housin v. Barrow, 6 T.R. 122. 161.

But see Boyd v. Durand, 2 Taunt.

void; and in this case the party may have an action of false imprisonment (*p*). *Sed qu.* if bail may not, in order to surrender; or the sheriff on being ruled to bring in the body (*q*).

29 Car. 2, c. 7. s. 6.

A prisoner escaped, and was retaken on a *Sunday*, by virtue of a judge's warrant, called an escape-warrant. The question was, whether this taking was such service of process as was against the 29 Car. 2. *Per Cur.*—"This is a taking in the nature of a *fresh pursuit*, and is no original process; and the gaoler or party might have taken him on a *fresh pursuit* on a *Sunday* before the statute." He might have been retaken on a *Sunday* without a warrant.

May take a prisoner on a Sunday, if he escape.

Any person may be taken on the *Lord's* day by virtue of any warrant granted in pursuance of this act.

On escape warrant, may take on Sunday. c. 9. s. 3.

1 Ann. stat. 2. c. 6. s. 1. 5 Ann.

If a defendant arrested on a *Saturday* escapes, he may be retaken on a *Sunday* (*s*), for that is not in execution of process, but a continuance of the former imprisonment.

If arrested on Saturday and escapes.

It is said that a person may be arrested on a *Sunday* on the Lord Chancellor's warrant, or an order of commitment for contempt: for he is considered as in custody from the time of making the order, and the warrant is directed to the gaoler, as in the nature of an escape-warrant (*t*).

May be arrested on a Sunday, on the Lord Chancellor's warrant.

I remember that a sheriff's officer was indicted for arresting defendant on a *commission of rebellion*, out of the *Exchequer of Pleas*, on a *Sunday*, and he was found guilty, and fined.

Commission of rebellion.

The defendant cannot be taken on a *Sunday* for the non-payment of a penalty upon a conviction (*u*).

For a penalty on conviction.

So on attachment for non-performance of an award, or non-payment of costs. And where *A.* was arrested at the suit of *B.* and discharged, the sheriff not knowing that there was also a detainer in his office at the suit of *C.*, and on the *Sunday* following he was arrested at *C.*'s suit, the Court discharged him out of custody, considering the arrest on the *Sunday* as an *original* taking, or as a retaking after a *voluntary* escape (*w*).

Attachment. Where *A.* was arrested and discharged, the sheriff not knowing of another writ being in the office, held he could not be taken on Sunday on the detainer.

(*p*) 3 East, 155. Salk. 78. pl. 1.

(*t*) 1 Atkins, 55. *Sed qu.*

(*q*) 1 Tidd, 216.

(*u*) Rex v. Myers, 1 T. R. 265.

(*r*) 6 Mod. 95. 2 Salk. 626. pl. 7.

(*w*) Atkinson v. Jamison, 5 T. R.

2 Lord Ray. 2028.

25. Barnes, 373.

(*s*) 6 Mod. Cas. 231.

As to privileged Places.

Palaces.

No arrest ought to be made, or process executed, in any palace where the king resides, or which is kept in a state of preparation for him, (except where the process issues out of the Palace Court, or in the king's presence,) nor in any place where the king's justices are actually sitting (*x*). Nor, it is said, of any of the king's servants in ordinary in any other place, without notice first given to the *Lord Chamberlain*, that he remove them, or make them pay their debts (*y*). An arrest within the verge of the palace is no ground of discharge; it is only for those whose jurisdiction is infringed to complain (*z*).

28 H. 8. c. 12.

Privileged places now demolished, and to prevent arrests highly penal.

8 & 9 W. 3. c. 27. s. 15;
9 G. 1. c. 28. s. 1; & 11 G. 1. c. 22. s. 1.

Persons opposing execution of process, or abusing the officer, if he receives a hurt, guilty of felony.

Formerly one of the greatest obstructions to public justice, both of the civil and criminal kind, was the multitude of pretended privileged places, where indigent persons assembled together to shelter themselves from justice (especially in *London* and *Southwark*); such as *White-friars*, *Savoy*, *Salisbury-court*, *Ram-alley*, *Mitre-court*, *Fuller's-rents*, *Baldwin's-gardens*, *Montague-close*, or the *Minories*, *Mint-Clink*, or *Deadman's-place*, within the hamlet of *Wapping* or *Stepney*, under the pretext of their being ancient palaces of the crown, or the like: all of which sanctuaries are now demolished, and the opposing of any process therein is made highly penal, it being enacted,

“*That persons opposing the execution of any process in*
“*such pretended privileged places within the bills of mor-*
“*talities, or abusing any officer in his endeavours to execute*
“*his duty therein, so that he receives bodily hurt, shall be*
“*guilty of felony, and transported for seven years: and*
“*persons in disguise, joining in or abetting any riot or*
“*tumult, on such account, or opposing any process, or*
“*assaulting or abusing any officer executing, or for having*
“*executed, the same, shall be felons without benefit of*
“*clergy.*”

May arrest within the liberty of the Rolls.

Sheriff may arrest within the *liberty of the Rolls*, as that has been held no privileged place, unless for witnesses, or parties to the suit, going and returning (*a*).

Who are privileged from Arrest.

King and queen.

The person of the king is so sacred as that no violent hands may in any case be laid upon him; neither may he

(*x*) 10 East, 578. 3 T. R. 735. 3 Bl. Com. 289.

(*y*) Wood's Inst. 576. 1 Lev. 159. 3 Inst. 140, 141.

(*z*) Spinks v. Spinks, 7 Taunt. 311.

(*a*) Freem. 368. pl. 474.

be impleaded or sued by action, as a common person may; but wheresoever the king shall seize any man's land, or take goods, (having no title by order of his laws so to do,) the subject, for his remedy in all such cases, is driven to sue unto his sovereign by way of petition only, for that no action lies against the king (*b*). A queen regnant has the same privileges as a king. A queen consort is free from arrests, and a queen dowager is also entitled thereto (*c*).

The king's servants in ordinary are also privileged from arrest, even though they publicly carry on trade, and the debt is contracted in the course of the trade (*d*). But the privilege is only allowed to servants in ordinary, and can only be claimed by the king as necessary to his personal state and dignity (*e*). Allowed to the fire-lighter of the king's yeoman of the guard, performing the actual duties (*f*). Refused to the major of the Tower (*g*), deputy-governor, gentlemen of the privy chamber (*h*). But the servants of the queen consort, or dowager, have no such privilege (*i*). King's servants.

Peers and Members of Parliament.

English peers, temporal and spiritual, are by the common law privileged from arrest in civil suits, as are peeresses by birth or marriage. This privilege is extended to Scotch peers and peeresses by 5 *Ann.*; and to Irish peers and peeresses by 39 & 40 *Geo.* 3. But for treason, felony, or breach of the peace, they are not free from arrests (*k*). A peer may also be arrested on an attachment for a contempt (*l*). The privileges of peers' servants are now taken away (*m*). Peers.
c. 8. art. 23.
c. 67, art. 4.
10 Geo. 3. c. 50.

Members of parliament are privileged from arrest, not only during its session, but for a convenient time before the first meeting, and after the dissolution of it, and for forty days after prorogation, and before the next meeting (*n*). But not a burgess attending at an election pursuant to a mandamus, by summons addressed to the Members of parliament.
10 G. 3. c. 50.

(*b*) Staunf. Pr. 42. 72, 73.

(*c*) 2 Inst. 48. 3 Inst. 30. pl. 19.

(*d*) 2 Taunt. Rep. 167. 5 T. R. A. 234. Pett's case, Str. 985.

686.

(*e*) Tapley v. Battine, 1 Dow. & R. 79.

(*f*) Forster v. Hopkins, 2 Ch. R. 47, and 6 M. & S. 271.

(*g*) Batson v. L'Lean, 2 Ch. 49.

(*h*) Luntley v. Battine, 2 B. &

(*i*) 1 Keb. 842.

(*k*) 4 Inst. 25.

(*l*) 1 Burr. 631.

(*m*) Connolly v. Smith, 1 Ch. 83.

(*n*) 2 Lev. 72.

corporation at large. *Qu.* If it had been to him individually (*o*).

Ambassadors, Envoys, &c.

Ambassadors and public ministers of foreign powers. ch. 12.

Ambassadors and public ministers of foreign princes and states are privileged from arrest by the 7 *Ann*, as are their domestic servants; but it must appear that the person claiming the benefit of the act as domestic servant to a foreigner is actually and *bonâ fide* his servant at the time of the arrest; and

No merchant, &c. being a bankrupt, to have any benefit of this act. Nor the servant of an ambassador, unless his name be registered, &c.

s. 5.

“ No merchant or trader whatsoever within the description of any of the statutes against bankrupts, who hath or shall put himself into the service of any such ambassador or public minister, shall have or take any manner of benefit by this act; and that no person shall be proceeded against as having arrested the servant of an ambassador or public minister by virtue of this act, unless the name of such servant be first registered in the offices of one of the principal Secretaries of State, and by such Secretary transmitted to the sheriffs of *London* and *Mid-dlesex*, for the time being, or their under-sheriffs or deputies, who shall upon the receipt thereof hang up the same in the public place in their offices, whereto all persons may resort, and take copies thereof without fee or reward.”

The omitting to register and hang up the names of an ambassador's servants does not take away their privilege from arrest, but the sheriff or his officers cannot be proceeded against for arresting them (*p*).

Envoy.

It should seem that an envoy and his servants would be considered privileged by the act. But it has not been positively decided whether a consul is or is not privileged from arrest, but it rather seems that he is not (*q*).

Consul.

And it has now been solemnly decided that he is not such a public minister of a foreign prince as is entitled to this privilege within the statute (*r*).

What the privilege extends to.

The privilege of a foreign minister extends to his family and servants; and this privilege has been long settled to extend to the *servants* who are *natives* of the *country* where he *resides*, as well as to his *foreign servants*, whom he brings over with him. By the law of nations, a foreign minister cannot give a protection to a person who is not *bonâ fide* of his family.

Who he cannot protect.

(*o*) *Nixon v. Burt*, 7 Taunt. 682. (*q*) 4 Burr. 2015. 1 Taunt. Rep. 108. (*p*) 4 Burr. 2017. 3 T. R. 79. (*r*) *Viveash v. Becker*, 3 M. & S. 284.

Binkershoeck (s) says, that a person in debt cannot be taken into the service of a foreign minister in order to protect him. And indeed this would give the foreign minister a power to dispense with the private debts of the subjects of this country (t).

Person in debt cannot be protected.

A person living as a clerk is no domestic servant (u).

Clerk no servant.

Of Officers of both Houses of Parliament, Clergymen, Serjeants at Law, Barristers, Officers of Courts, and Attornies.

Assistant officers of both houses of parliament, who repair to parliament by the king's writ of summons, or upon legal elections, returns, and continually attend therein, to discharge their duties, during the whole session of parliament, till its dissolution, and that during their stay, coming, and return from it to their homes, are privileged (x). Also the serjeants at arms, and doorkeepers, clerks, and such like (y).

Assistant officers of both Houses.

A clergyman during his attendance on divine service is privileged from arrest, as he is in going to and returning from church, but not if he stay there with a fraudulent design to avoid process; and by stat. 8 *Hen. 6*, all clergymen called to convocation by the king's writs, and their servants, are privileged from arrest in coming, tarrying and returning.

Clergymen.

50 E. 3. c. 5;
1 R. 2, c. 15.
c. 1.

By 9 *Geo. 4*. the arrest of a clergyman whilst performing divine service, or going or returning therefrom, is a misdemeanor, and the party convicted thereof liable to fine or imprisonment, or both.

c. 31.

It is said (z) that the judges, their necessary servants, goods and chattels, shall not be arrested or taken, but in case of treason or felony: but "judges' clerks may be arrested." (a)

Judges.

Their clerks.

Serjeants at law and barristers are not privileged from arrests in the superior courts; but they cannot be arrested in an inferior one (b), nor on the circuit (c).

Serjeants at law and barristers.

Corporations and hundredors are privileged from arrests, and of course from outlawries, no *capias* lying against them. *Qu.* as to burgesses attending elections (d).

Corporations.

(s) *De foro legat.*

(a) L. Ray. 339. Pr. Reg. C.P. 380.

(t) Lockwood v. Coysgarne, 2 Burr. 1676.

(b) Cro. Car. 84, 85. 2 Lev. 129. Freeman, 389. 2 Mod. 296.

(u) Barnes, 264. Pr. Reg. C. P. 14.

L. Raym. 399. Scrogg's Case, M.

(x) Prynn, Reg. 4 pt. 690.

26 Car. 2. in C. B.

(y) Cromp. 11.

(c) 1 H. Bl. 636.

(z) Cromp. Juris. of C. 11. 2 Sid.

(d) Nixon v. Burt, 7 Taunt. 682.

31.

2 Bl. 1190.

Officer of court.

If attorney arrested, must put in bail and plead his privilege.

Sheriff cannot take notice of such privilege.

Lord Chancellor and the Masters.

Cursitors, &c.

Auditor of the Exchequer, and other officers.

2 & 3 Ann. c. 18. s. 1.

Marshal and warden.

Attornies when protected.

Officers of courts are privileged from arrests, but this privilege is in respect of their necessary attendance on those courts. If the sheriff arrests an attorney, he cannot discharge him on a writ of privilege, for he must plead it *sub pede sigilli*. But a writ of privilege will discharge him if he is arrested *in an inferior court* (e).

The sheriff cannot take notice of their privilege (f); but an attorney may apply to be discharged on common bail if process issued out of the *same court* (g). But he must show in his affidavit that he practised *within a year* previous to the arrest (h).

The right of being exempted and freed from arrests by process of other courts belongs to the Lord Chancellor or keeper, and to all the Masters (i), cursitors, ministers, and known clerks of the court of Chancery, and to the menial servants of the Chancellor or keeper, and of the ministers and officers (k).

Clerk of the Pells shall have privilege (l). Cursitor's clerk (m), auditor of the Exchequer, and his servants, Commissioners of the Treasury, garter king of heralds, receiver-general of the revenues, clerk of the remembrancer, and an attorney of the Exchequer, are entitled to privilege (n).

The marshal and warden of the Fleet are not to be arrested (o).

If an attorney is attending, on a judge's summons, the master of the K. B., or prothonotary, to tax costs, I take it the officer must not arrest him (p), nor on the execution of a writ of inquiry (q).

Parties to Suits and Witnesses.

Parties to suits.

As the courts of justice are open to all, so the law protects the persons of those who come to attend them, both in going thither and returning; but in this case the defendant must appear in person, that the court may

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|----------------------------------|----------------|----------------------------------|
| (e) 1 Sand. 67. | 2 Bl. R. 1085. | (l) Comb. 482. |
| 1087. | | (m) Skin. 521. |
| (f) Co. Lit. 138. | 1 Salk. 2. | (n) Staunf. 164. 2 Sid. 164. pl. |
| Doug. 671. | | 3. Andr. 46. 2 Shower, 299. Sav. |
| (g) 1 Wils. 298. | | 131. pl. 204. Ord. of H. C. 27 |
| (h) Dyson v. Birch, 1 B. & P. 4. | | Nov. 1699. |
| (i) Cromp. Jur. of C. 48, b. | | (o) 1 Vent. 65. |
| Skin. 521. | | (p) Barnes, 278. Rep. C. B. 140. |
| (k) Ord. Ch. 22 Dec. 5, Car. | | (q) Barnes, 173. |
| 1629. Prac. Reg. Ch. 284. | | |

examine him, and that they may be satisfied upon his oath that he was either prosecuting or defending some suit pending in that court when he was arrested (*r*).

So a plaintiff attending the execution of a writ of inquiry, with his witnesses, held to be privileged; but the under-sheriff is not bound to take notice of the privilege (*s*).

So if the court give either plaintiff or defendant leave to go after evidence in any cause depending in that court, and he be arrested, he shall have privilege. Otherwise, if he go without permission (*t*).

Plaintiff or defendant

The court have laid down this general rule: that all persons who had relation to a suit which called for their attendance, whether they were compelled to attend by process or not, (in which number *bail* was included,) were entitled to privilege from arrest *eundo et redeundo*, provided they came *bonâ fide*. But if one who comes to justify as bail be an *uncertificated* bankrupt, he is not privileged. A barrister was arrested on the circuit, and discharged (*u*).

A general rule respecting persons engaged in suits.

11 Ed. 4.

A party who has attended his cause all day in court, and in the evening retires, with his witnesses, to a tavern in *Palace-yard*, held to be privileged from arrests, *causa redeundi* (*x*).

How long party is protected.

Courts of justice not only protect the parties themselves, but also their witnesses, *eundo et redeundo*, properly subpoenaed to attend the trial, and give evidence: for, since they are obliged to appear by the process of the court, they will not suffer any one to be molested whilst he is paying obedience to the writ. Courts not only protect the person, but likewise all the things that are necessary for his journey; but not merchandise or goods for sale. The witnesses must have a reasonable time allowed them to get home; but it was held that the court could not try all niceties of delays that might possibly happen: therefore, an attachment was granted against the plaintiff and the bailiff, for arresting a woman who attended *Winchester* assizes. The trial ended on *Friday*, and she set off on *Saturday* home to *Portsmouth*, and in her journey was arrested (*y*). Witnesses attending the

Witnesses.

Not only protect a person, but all things necessary for his journey.

3 H. 6. 4.

(*r*) Gilb. C. P. 207. 2 Roll. (x) 2 Bl. R. 1113. And see 1 Abr. 272. Camp. N. P. 229. 11 East. R. 439.

(*s*) *Walters v. Rees*, 4 B. Moore, 34. Tidd, 196. 784.

(*t*) Gilb. C. P. 207. (*y*) 1 Moor, 65. 2 Roll. 273.

(*u*) *Meckins v. Smith*, 1 H. Bl. 2 Str. 986. 636. 3 Barn. 27.

insolvent debtor's court are within this privilege (z). A party to a cause is privileged from arrest during his attendance on an arbitration under an order of *nisi prius* made a rule of court. But it is doubtful whether a person attending commissioners of bankrupts is privileged (a).

Party living in *London* and summoned to *Exeter* to attend before an arbitrator, went to *Clifton* for the alleged purpose of searching for papers, where he staid two days: the court of King's Bench held, that though the deviation might be reasonable, yet that the length of time he staid was not so; and it not being sworn that he was occupied all the time in the object of his going thither, he was not protected. On an application to the court of Exchequer, two judges *contra*; one held that he was protected (b).

Jurors.

As jurors are summoned by the process of the court, they are equally obliged to appear there; and therefore are no more to be molested whilst they are obeying the commands of the court than witnesses, &c.

Bankrupt.

6 G. 4. c. 16.
s. 117.

Bankrupt is free for forty-two days, or such further time as allowed to finish his examination, if not in custody previous to surrender.

By the 6 G. 4. c. 16. s. 117, repealing all former Acts,

“ Every bankrupt shall be free from arrest or imprisonment in coming to surrender to the commissioners, and from actual surrender for *forty-two days*, or such further time as shall be allowed to finish his examination, (provided he is not in custody at the time of surrender,) and if he be arrested for debt, or on any escape-warrant in coming to surrender, or after surrender, within the time aforesaid, then, on producing the summons, under the hands of the commissioners, and giving the officer a copy thereof, he shall be immediately discharged: and in case any officer shall detain such bankrupt after such notice, such officer shall forfeit to such bankrupt, for his own use, 5*l.* for every day he shall detain him.”

This is a *particular* privilege to enable them to surrender, and, till their actual surrender, is confined to the act of *going with that view*; not a general privilege during the whole time which the act allows (c); nor to the case of an adjournment *sine die* (d).

(z) *Willingham v. Matthews*, 6 Taunt. 356.

(a) 3 East, 89. Tidd, 174.

(b) *Randall v. Gurney*, 3 B. & A. 252. 1 Ch. Rep. 683.

(c) Cowp. 156.

(d) *Ex parte Woods*, 1 Gl. & G. 75.

The privilege of a bankrupt from arrest upon any "escape-warrant" extends only to such as are at the suit of creditors; the marshal or gaoler may retake him at any time (*e*). A bankrupt held to be protected the whole of the forty-second day, where his examination took place on that day (*f*).

The same rule applies to the enlarged day as to the forty-second (*g*).

So the privilege extends to such enlarged time (*h*).

So it extends to a bankrupt attending a dividend meeting several years after his last examination (*i*).

The former act 5 G. 2. held not to alter the rights of the bail to surrender the defendant, although become bankrupt; and they are still, therefore, liable, by *ca. sa.*, to be fixed, unless they render (*k*). 5 G. 2. c. 30.

Whether a *cessio bonorum* in *Guernsey*, or a bankruptcy in a foreign state, be a discharge, is matter which the court will not act upon, but leave it to be put on the record (*l*).

Seamen and Soldiers.

No seaman is liable to be arrested or taken out of His Majesty's service unless the debt amounts to 20 *l*. Seaman. 1 G. 2. c. 14. s. 15.

The sheriff is liable to a *qui tam* action, on the 44. G. 3, if his bailiff or officer, after bail given upon arrest, discharge him, instead of surrendering him up to some naval officer (*m*). 44 G. 3.

A seaman on the ship's books, though he has absented himself, is a seaman within the act (*n*).

Nor shall any volunteer soldier be liable to be taken out of His Majesty's service by any process or execution, unless for a real debt of 20 *l*. Volunteer soldier. 39 G. 3.

These acts have been construed to extend, not merely to common soldiers, and troopers in the life-guards, but also to non-commissioned or warrant officers, as gunners, serjeants and drummers. These acts do not extend to commissioned officers, nor to soldiers for disobeying orders Construction of the act.

(*e*) *Anderson v. Hampton*, 1 B. & A. 308, and *Ex parte Johnson*, 14 Ves. 36. (*h*) 3 Esp. N. P. R. 49. 8 T. R. 475, and 15 Ves. 116.

(*f*) *Ex parte Davies*, 1 Buck B. C. 80. (*i*) 3 Esp. N. P. 117. 8 T. R. 534.

(*g*) *Ex parte Simpson*, 2 Wils. R. Ch. 127. (*k*) *Payne v. Spencer*, 6 M. & S. 231. (*l*) 2 Ch. 53, 55.

(*m*) *Sturmy v. Smith*, 11 East R. 25. (*n*) *Barnes*, 95.

of justices, or on any other *criminal* account. Nor to volunteer drill serjeants (*o*).

Aliens.

43 G. 3. c. 155.
s. 28.

Aliens who have quitted their country by reason of the French revolution are not liable to be arrested for any debt contracted abroad out of the king's dominions.

Executors and administrators.

Executors and administrators are privileged from arrest when they act merely in *autre droit*, and have duly administered the effects of the deceased.

Married women.

Feme covert is not liable to arrest; and although separated *mensû et thoro*, the court discharged a married woman, on a common appearance. She being arrested as acceptor, the drawer and intestate knowing her to be a married woman, and the plaintiff suing as administratrix, made no difference (*p*). But to entitle her to be discharged, the fact of marriage must be positively sworn to (*q*).

Wales and Counties Palatine.

Wales or counties palatine, not to arrest under 20*l*.

"No sheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or process issuing out of any of His Majesty's courts of record at *Westminster*, shall hold any person to special bail, unless affidavit be first made in writing, and filed in that court out of which such writ or process is to issue, signifying the cause of action, and that the same is 20*l*. and upwards; and when the cause of action is 20*l*. bail shall not be taken for more than the sum expressed in such affidavit."

Bail for no more than sum expressed.

11 & 12 W. 3.
c. 9. s. 2.

not be taken for more than the sum expressed in such affidavit."

If court awards process to the sheriff, without cause, sheriff, on arrest, not punishable.
20 H. 6. 5.

If the court shall award process to the sheriff to arrest or take another, without cause, and the arrest is made, the sheriff or his officers are not punishable. But it must be issued out of a court that hath jurisdiction, *judicium a non suo judice datum, nullius est momenti*. For the sheriff is bound at his peril to take knowledge of the law: *Ignorantia juris non excusat ministros legis* (*r*).

Sheriff not liable to false imprisonment if he arrest a bankrupt.

It has been holden, that though certificated bankrupts, or persons discharged under insolvent acts, are privileged from arrests, yet the sheriff or his officer is not liable to an action of false imprisonment for arresting them (*s*). The

(*o*) 1 Stra. 7. 1 Wils. 216. 8 211, *semb. contr.* Pritchard v. Cow-
East, 105. 2 T. R. 270. 5 T. R. lam, 2 Marsh. R. 40.

156.

(*q*) Harvey v. Cooke, 5 B. & A.

(*p*) Hookham v. Chambers, 3 Br. 747.

& B. 92. Carlisle v. Starr, 8 Pri.

(*r*) 10 Co. 76.

161. Holloway v. Lee. 2 B. Moore,

(*s*) Tarlton v. Fisher, Dougl. 671.

general law as to sheriffs is, that if a sheriff has acted in obedience to the mandate of the court he is excused. If he arrest a *peer*, the writ is erroneous; yet he is not a trespasser for executing it: and Lord *Mansfield* there says, the sheriff is not bound not to arrest(*t*); and it is said, that privilege will not be allowed but in fair cases; even then trespass will not lie for the arrest. Peer.

Where a party assumed a different christian name, by which he was arrested, the court held, that as the sheriff could only look at the writ, and arrest the person there named, no action would lie against him for such arrest(*u*). So where the defendant executed a warrant of attorney by a different christian name, and the writ followed the warrant(*x*).

Regulations after Arrest.

The abuses of gaolers and sheriffs officers towards the unfortunate persons in their custody, are well restrained and guarded against by 32 *Geo. 2*, which enacts, Abuses of gaolers, &c. rectified. c. 28.

That no sheriff, under-sheriff, &c. shall, at any time or times hereafter, convey or carry, or cause, &c. any person by him or them arrested, or being in his or their custody by virtue or colour of any action, writ, &c. to any tavern, ale-house, &c. or to the private house of any such officer or minister, or of any tenant or relation of his, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person with any sum of money for any wine, &c. save what he, she or they shall call for of his, her or their own free accord; nor shall cause or procure him, her or them to call or pay for any such liquor or things, except what he, she or they shall particularly and freely ask for; nor shall demand, take or receive, or cause, &c. directly or indirectly, any other or greater sum or sums of money than is or shall be by law allowed to be taken or demanded for any arrest or taking, or for detaining or waiting till the person so arrested or in custody shall have given an appearance or bail, as the case shall require, or agreed with the person at whose suit or prosecution he, she or they shall be taken or arrested, or until he, she or they shall be sent to the proper gaol belonging to the county, &c. where such arrest or taking shall be; nor shall exact or take any reward, gratuity or money for keeping the Officer may not carry his prisoner to any tavern, &c. without his consent;

nor charge him for liquor, &c. other than such as he shall freely and particularly call for; nor demand for caption or attendance any other than his legal fee;

nor exact any gratuity, money,

(*t*) *Cameron v. Lightfoot*, 2 Bl. R. 1190.

(*u*) *Morgan v. Bridges*, 1 B. & A. 647; and S. C. 2 Stark. N. P. 315.

(*x*) *Reeves v. Slater*, 7 B. & Cr. 486.

&c. nor carry his prisoner to goal within twenty-four hours after his arrest, unless, &c.

person so arrested or in custody out of gaol or prison ; nor shall carry any such person to any gaol or prison *within four-and-twenty hours from the time of such arrest*, unless such person so arrested shall refuse to be carried to some safe and convenient dwelling-house of his, her or their own nomination or appointment, within a city, borough, corporation, or market town (*y*), in case such person shall be there arrested, or within three miles from the place where such arrest shall be made, if the same shall be made out of any city, borough, corporation, or market-town, so as such dwelling-house be not the house of the person arrested, and be within the county, riding, division or liberty in which the person under arrest was arrested ; and then, and in such case, it shall be lawful to and for any such sheriff, or other officer or minister, to convey or carry the person so arrested, and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she or they may be sent to by virtue of the action, writ or process against him, her or them.

s. 1.

Nor may officer take for the diet, lodging, and other expenses of such prisoner more than shall be allowed by an order of the justices.

That no sheriff, under-sheriff, &c. shall, at any time or times hereafter, take or receive any other or greater sum or sums for one or more night's lodging, or for a day's diet, or other expenses of any person under arrest on any writ, &c. other than what shall be allowed as reasonable in such cases by some order already made, or which shall hereafter be made by the justices of the peace, at some general or quarter-sessions which shall be held for the county, &c. where such arrest or taking shall be, who are hereby authorized and required, with all convenient expedition, to make some standing order or orders for ascertaining such charges and expenses within their respective counties, &c. if the same have or hath not been already there made ; and if any such order hath or have been there already made, such justices for the time being, at their respective general or quarter-sessions, are hereby authorized and required to vary or alter the same from time to time as they shall see occasion ; and also are hereby required to cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace of every such county, &c. respectively, to be put and kept in some conspicuous place in the sessions house, or some other proper place of every such respective county, &c. as such justices shall order, so as

A copy whereof is to be hung up in some conspicuous part of the sessions-house or other proper place.

(*y*) The reason why they shall not be carried to prison sooner, is, that they may have an opportunity of procuring bail, or of agreeing with the

plaintiff This clause, therefore, can only apply to those persons who are *bailable*.

the same may be there seen and examined, as occasion may require.

s. 2.

These provisions are confined to persons arrested on *mesne process*; the intent of them being, that such persons may have an opportunity of procuring bail, or of agreeing with the plaintiffs, and it has accordingly been determined that a sheriff's officer is not liable to the penalties of the statute for carrying a defendant taken in *execution* to prison within twenty-four hours after the arrest (*z*).

Provisions confined to *mesne process* only.

Execution.

But the fees payable to the sheriff are not within this act, the table of fees there mentioned being intended to regulate those of the gaoler and officers within the gaol, and the s. 1, prohibiting the sheriff from taking more on an arrest than is "allowed by law," is the allowance of the Court as taxed by the Master (*a*).

No time is limited within which a defendant arrested on *mesne process* should be carried to the *county gaol* by this act. But it seems to be the duty of the sheriff, if possible, to carry the defendant to the county gaol *by the return of the writ* on which he was arrested; afterwards the sheriff keeps him at his peril, in case the creditor is delayed (*b*). And where the sheriff, having arrested a defendant on *mesne process*, keeps him in his custody *after the return of the writ*, and then carries him to prison, he is not liable to an action on the case *as for an escape*, if the jury find *that the plaintiff had not been delayed or prejudiced in his suit* (*c*). But the sheriff is not answerable for any extortion of an officer, (not named in the warrant) to whose lock-up house the party may be brought after arrest (*d*).

As to the time.

And to the intent that no person may suffer by reason of his ignorance of the provisions made by this act, it is further enacted,

Sheriffs and the secondaries to deliver printed copies of these clauses to bailiffs, &c.

That all and every sheriff, under-sheriff, and bailiff of any liberty, and also the respective secondaries and clerks in the respective compters in *London*, and all other persons intrusted with the execution of process, or who shall enter any actions, or make any warrant or warrants, or any writ or process, in order to have the same executed, shall deliver a printed copy of the several clauses contained in this act relating to bailiffs, serjeants, and other officers and persons who shall be employed under them respectively to execute any writ, process or attachment,

(*z*) *Evans v. Atkins*, 4 T. R. 555.

(*b*) *Planck v. Anderson*, 5 T. R. 41.

(*a*) *Martin v. Bell*, 6 M. & S. 220.

(*c*) *Ib.* 37.

Bolders v. Moss, 5 T. R. 417.

(*d*) *George v. Perring*, 4 Esp. 63.

And make it a part of the condition of the bond, &c. that they shall show, &c. if carried to public-house, and permit him or his friend to read over the same, before any liquor or victuals be brought or called for.

s. 3.

Sheriffs and gaolers to allow debtors in custody to send for, or have brought to them, victuals and beer from what place they shall think fit.

And to have and use such bedding, &c.

s. 4.

or who shall arrest any person on any action which shall be entered, or otherwise, within their respective jurisdiction, to every such bailiff, &c. and shall make it the condition of every security or bond which shall be given or made to any such sheriff or under-sheriff, or bailiff of any liberty, by any bailiff, &c. who shall be employed or intrusted to execute any such writ or process as aforesaid under him, them or any of them, that every such bailiff, &c. and other person respectively, shall and will show and deliver a copy of the said clauses to every person he shall arrest by virtue of any process, &c. or under any warrant made out thereon, and carry or go with to any public or other house where any liquor shall be sold; and also shall and will permit every such person who shall be so arrested, or any friend of him or her, to read over the same clauses, before any liquor, meat or victuals shall be, at any such public or other house, called for or brought to any such person who shall be so under arrest there: and in case any bailiff, &c. shall in any respect offend in the premises, every such offence, besides the breach of the condition of every such security-bond, shall be accounted and deemed a misdemeanor in the execution of the process or action on which such person was arrested, and shall be punishable as such by virtue of this act.

That every sheriff, under-sheriff, bailiff of any liberty, gaoler, and keeper of any prison or gaol, or any other person or persons to whose custody or keeping any one hath been or hereafter shall be arrested, taken, committed, *or charged in execution*, by virtue of any writ, process, or action, or attachment, shall at all times hereafter permit and suffer every such person, during his, her or their respective continuance under arrest, or in custody, or in execution for any debt, damages, costs or contempt, at his, her or their free will and pleasure, to send for or have brought him, her or them, at reasonable times in the day-time, any beer, &c. from what place he, she or they shall think fit, or can have the same; and also to have and use such bedding, linen, or other necessary things, as he, she or they shall have occasion for and think fit, or shall be supplied with, during his, her or their continuance under any such arrest or commitment, without purloining or detaining the same, or any part thereof, or enforcing, or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them in the using thereof, or relating thereto; and no such prisoner or prisoners shall pay any thing in respect thereof to any such sheriff, under-sheriff, &c. as aforesaid.

And that no gaoler or keeper of any prison, or other person thereto belonging, shall demand, take or receive, directly or indirectly, of any prisoner or prisoners for debt, damages, costs, or contempt, any other or greater fee or fees whatsoever for his, her or their commitment, or coming into gaol. chamber-rent there, release or discharge, than what shall be mentioned or allowed in the list or table of fees settled, enrolled, and registered according to the directions of the said act.

Not to take more than what is mentioned in the list or table of fees settled by the act.

s. 12.

And for the more speedy punishing of gaolers, bailiffs, and others employed in the execution of process, for *extortion*, or other abuses in their respective offices and places, it is further enacted,

If gaolers extort more money than allowed, may petition in term.

That upon the petition, in *term time*, of any prisoner, or person being or having been under arrest or in custody, complaining of any exaction or extortion by any gaoler, &c. or person in or employed in the keeping or taking care of any gaol or prison, or other place, where any such prisoner or person under or having been under arrest, or in custody, by any process or action is or shall have been carried, or in respect of the arresting or apprehending any person or persons by virtue of any process, action or warrant, or of any other abuse whatsoever committed or done in their respective offices or places, unto any of His Majesty's courts of record at *Westminster* from whence the process issued by which any person who shall so petition was arrested, or under whose power or jurisdiction any such gaol, prison or place is, or, in vacation time, to any judge of any such courts at *Westminster* from whence any such process so issued, or to the judges of assize, &c., are by the said act authorized and required to hear and determine the same, in a summary way, and to make such order thereupon, for redressing the abuses which shall by any such petition be complained of, and for punishing such officer or person complained against, and for making reparation to the party or parties injured, as they shall think just, together with the costs of every such complaint; and all orders and determinations which shall be thereupon made by any of the said courts, &c. shall have the same effect, force and virtue as other orders of the same courts, &c., and obedience thereto may be enforced in like manner by attachment or otherwise.

to any of the courts at Westminster from whence process issued, or in vacation to any judge, who is to make order.

Costs.

s. 11.

And that every *sheriff, under-sheriff, bailiff of any liberty, bailiff, serjeant at mace, gaoler, and other officer* and person as aforesaid, who shall in anywise offend against the said act, shall, for every such offence (over and above such other penalties or punishment as he may be liable unto) forfeit

Offence against this act forfeit 50 l.

s. 12.

Sheriff to take
no reward

3 E. 1. c. 26.

20 E. 3. c. 6.

1 H. 4. c. 11.

23 H. 6. c. 9.

The fees as now
settled for arrest.

32 G. 2.

23 H. 6. c. 9.

Fees to the
Sheriffs in Wales: 34 H. 8.

c. 46. s. 2.

Persons arrested
upon mesne pro-
cess need not
give bail to the
sheriff, but may
deposit in his
hands the sum
indorsed upon
the writ and 10*l.*
to answer costs.

and pay to the party thereby aggrieved the sum of 50*l.* to be recovered with treble costs, by action of debt, &c. in any of His Majesty's courts of record.

Sheriffs and their officers ought to take no reward, or other things for doing of their office, but only of the king, or that which is appointed for them to take by the statutes and laws of this land; and if they do otherwise, it is extortion in them (*e*); and if they have been paid more by mistake they cannot retain it (*f*).

Where a party, after being arrested, and entering into a bail-bond, had been compelled to pay 2*l.* 3*s.* 6*d.* as a caption fee, and for the expenses of the bail-bond, the court granted a rule (with costs) for referring it to the Master, who disallowed the whole (*g*).

The fees settled by the last act are much altered: for the arrest on mesne process in town the Master allows 10*s.* 6*d.*, in the country 1*l.* 1*s.* and if taken to gaol at a distance, 1*s.* per mile; but in an action on the 32 *G.* 2, the plaintiff must prove the sum allowed by law: the 23 *H.* 6, c. 9, not being the rule (*h*).

Respecting fees to be taken in *Wales*, see the 34 *H.* 8.

By 43 *G.* 3, it is enacted,

“That all persons who shall be arrested upon *mesne process*, within those parts of the united kingdoms of *Great Britain* and *Ireland* called *England* and *Ireland*, shall be allowed, in lieu of giving bail to the sheriff, to deposit in the hands of the sheriff, by delivering to him or to his under-sheriff, or other officers to be by him appointed for that purpose, the sum indorsed upon the writ by virtue of the affidavit for holding to bail in that action, together with ten pounds in addition to such sum to answer the costs which may accrue or be incurred in such action up to and at the time of the return of the writ, and also such further sum of money, if any, as shall have been paid for the king's fine upon any original writ, and shall thereupon be discharged from such arrest as to the action in which he, she or they shall so deposit the sum indorsed on the writ; and that the sheriff shall in every such case, at or before the return of the said writ, pay into the court in which such writ shall be returnable the sum of money so deposited with him as aforesaid, and thereupon, in case the defendant shall afterwards duly put in and perfect bail in such action, accord-

(*e*) Co. L. 368. Plo. 4 5.(*g*) *Watson v. Edmunds*, 4 Pri.(*f*) *Dew v. Parsons*, 2 B. & A. 309.

562.

(*h*) *Martin v. Slade*, 2 N. R. 59.

ing to the course and practice of such court, the sum of money so deposited and paid into court as aforesaid shall, by order of the court, upon motion to be made for that purpose, be repaid to such defendant; but in case the defendant shall not duly put in and perfect bail in such action, then and in such case the said sum of money so deposited and paid into court, upon a like motion to be made for that purpose, be paid out to the plaintiff in such action, who shall be thereupon authorized to enter a common appearance, or file common bail for such defendant, if the said plaintiff shall so think fit, such payment to plaintiff to be made subject to such deductions (if any) from the sum of ten pounds deposited and paid to answer the costs as aforesaid, as upon the taxation of the plaintiff's costs, as well of the suit of his application to the court in that behalf, may be found reasonable."

By the 7 & 8 G. 4, c. 71, the provisions of the 12 G. 1, c. 29; 5 G. 2, c. 27; 19 G. 3, c. 70, and 43 G. 3, c. 46, are extended, and there can be no arrest, on *mesne process*, for any debt under 20*l.*, and the defendant may pay the money deposited with the sheriff in lieu of bail, under the latter act, into court, instead of perfecting bail, or, if in custody, may pay the debt into court, with 20*l.* to answer costs, and file common bail, to receive it back on perfecting special bail, or even after perfecting bail to make such deposit, and file common bail; and further, to enable plaintiffs in proceedings by original and other writs, whereon no *capias* is issued, to serve the defendant personally with summons to appear instead of process by *distringas*, and if he cannot be so served, to sue out a *distringas*. By the same act also, the provisions of 19 G. 3, c. 70, are extended to causes of action for 20*l.* Nor shall the sheriff execute any process unless the writs be delivered by attornies, and indorsed with the name and place of abode; and all warrants, &c. issuing otherwise, to be void. On the day for putting in and perfecting bail, the defendant may give notice of his intention that such deposit shall remain in court to abide the event, and proceed in his defence (i). The sheriff of *Chester* not to arrest on *mesne process*, out of the courts at *Westminster*, for any sum under 50*l.*

The court would not permit the defendant to file common bail upon payment of the debt so sworn to, where no bail-bond had been taken, but a sum of money been

(i) *Rowe v. Softly*, 6 Bing. 634.

deposited; since the bail to the sheriff would have been liable to the whole debt and costs by reason of the penalty of the bond (*k*).

Money deposited in lieu of bail, by a friend, and bail afterwards put in, and defendant rendered, but he had subsequently become bankrupt, the court would not inquire into the right of the assignees to the money, but considered that under the statute they could refund it to the defendant alone (*l*).

But no poundage is due to the clerk of the dockets on such deposits (*m*).

Deposit should be taken at the time of arrest.

It has been decided, that if the sheriff do not take the deposit at the time of the arrest, he cannot relieve himself from an attachment for not bringing in the body by taking it afterwards (*n*).

Bail.

Bail and mainprize.

BAIL and *mainprize* are often used promiscuously in our law-books, as signifying one and the same thing; and they agree in this particular, that they save a man from imprisonment in the common gaol, his friend undertaking for him, before certain persons for that purpose authorized, that he shall appear at a certain day, and answer whatever shall be objected to him in a legal way (*o*). The chief difference is, that a man's *mainpernors* are barely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his gaolers, to whose custody he is committed, and therefore may take him upon a *Sunday*, confine him till the next day, and then render him (*p*).

The difference between them.

By common law, when sheriff arrested, was not obliged to take surety. 22 H.

By the common law, when the sheriff arrested any one, he was not obliged to release him without the writ of *homine replegiando* (*q*).

6. 46.; 19 H. 6. 43.; 21 E. 4. 77.

23 H. 6. c. 9.

But by 23 H. 6, it is enacted,

Sheriffs shall bail prisoners.

“ That all sheriffs, and all other officers, &c. shall let out of prison all manner of persons by them or any of them arrested, or being in their custody, by force of any writ, bill

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| (<i>k</i>) <i>Stevenson v. Cameron</i> , 8 T. R. 25. | (<i>n</i>) 9 East, 316. |
| (<i>l</i>) <i>Edelsten v. Adams</i> , 8 Taunt. 180. | (<i>o</i>) 2 Haw. P. C. c. 88. 4 Inst. |
| 557, & <i>Gould v. Berry</i> , 1 Ch. R. 145. | (<i>p</i>) 6 Mod. 241. L. Raym. 706. |
| (<i>m</i>) <i>Hume v. Brine</i> , 6 Moore, 124. | 12 Mod. 275. |
| and <i>Stewart v. Bracebridge</i> , 2 B. & A. 770. | (<i>q</i>) 2 Saun. 60. Fitz. 2, b. 6 Reg. 77. Fitz. N. B. 25, a. |

or warrant, in an action personal, *or by cause of indictment, upon reasonable sureties of sufficient persons* having sufficient within the counties where such persons be so let to bail or mainprize, to keep their days in such places as the said writs, bills or warrants, shall require, (such person or persons which shall be in their *ward* by *condemnation, execution, capias utlagatum, or excommunication*, surety of the peace, and all such persons which be or shall be committed to ward by the special command of any justices, and vagabonds refusing to serve according to the form of the statute of labourers, only excepted.) And that no sheriff, nor any of his officers, &c. aforesaid, shall take or cause, &c. or make any obligation for any cause aforesaid, or by colour of their office, *but only to themselves*, of any person, nor by any person which shall be in their ward by course of the law, but by the name of their office, and upon condition written, "*that the said prisoner shall appear at the day contained in the said writ, bill or warrant, and in such places as the said writs, &c. shall require.*" And if any of the said sheriffs, or other officers, &c. aforesaid, shall take any obligation in other form, *by colour of their offices*, that it shall be void."

Who to be bailed.
Upon what sureties.
When to appear.
What persons not bailable.

What bonds may be taken.

What bonds to be void.

The sheriff has no authority to take bond for appearance of persons arrested by him under process issuing upon an indictment at the quarter sessions for a misdemeanor, but can only take a recognizance for their appearance (*r*).

The sheriff cannot take bail on an attachment for a contempt out of the K. B. or C. P. (*s*). But a judge may at his chambers. (*sed. vid. infra p. 88*).

This statute consists of two parts, the one for the benefit of the sheriff, the other for the party arrested (*t*).

Statute consists of two parts.

That which respects the benefit of the sheriff is, that he shall take *bonds with sureties* for the indemnifying himself, which, if he be amerced, he may sue against the parties bound; or if he be sued for not having the body at the day, he may plead in bar. And it hath been determined that he may take *one surety*, for it is at his own peril, and he is left at his own discretion to take one, two, or more securities, as he thinks fit. And he may take it of one who has nothing in the county (*u*). And the words of the statute being general, it has been held not necessary

With respect to the sheriff.

But not bound to take less than two, Cr. El. 862.

(*r*) Benbough *u.* Rossiter, 4 T. R. 505.

(*t*) Clifton *v.* Webb, Cro. El. 808.

(*u*) Cro. El. 624. 672. 808. 862.

(*s*) 1 Str. 479.

that each should be worth the whole amount, where there is a sufficient number of sufficient persons having sufficient within the county (*x*).

The act means, that he shall take security only on writs that require special bail.

The act means that the sheriff shall take security on such writs as require *special bail only*, and *not* on *executions* (*y*). And therefore that he may take bond to appear on an *attachment for contempt* out of the court of Chancery for non-appearance (*z*). And the statute only applies to arrests on mesne process: the sheriff cannot take a bail-bond on attachment for costs (*a*).

Security must be given to the sheriff only, and not to the bailiff.

The security to the sheriff must be in the particular form marked out by the statute, otherwise it is void; and it requires the bond to be given *to the sheriff*, as such, *for the appearance of the party*, and for no other purpose; and if given to the bailiff it is bad (*b*).

Promise of a bribe to a bailiff illegal.

When a person is arrested for debt, either the officer is *not* obliged to admit him to bail *at all*, or he is *obliged* to admit him to bail *as of duty*; or he may use his *discretion*. Now in any of these cases it is *oppression* to take *money* for doing what he *ought* to do, even though it be the mere using his discretion "*whether he should admit him to bail or not*" (*c*). And if the officer take a fee for accepting *one as bail* for the defendant, he is liable to an attachment.

Obliged to admit to bail.

By this act an officer is obliged to admit a man to bail on *mesne process*, if they are *sufficient* and *unexceptionable*, when offered him. It is his duty to do it. And it is the principle of the common law, that an officer ought not to take money for doing his duty (*d*). If the taking of money for doing his duty was permitted, it would introduce such a scene of oppression as would be insufferable.

If the bailiff take money for letting persons out on bail he is punishable by attachment or indictment (*e*), and the sheriff answerable (*f*).

That which respects the benefit of the party.

The clause for the benefit of the party is, that the sheriff under colour of his office should not oppress the party, to make him any other manner of obligation than what is

(a) *Mason v. Booth*, 5 M. & S. 223. 1 Ventr. 185.

(y) *Cro. El.* 617.

(z) *Stiles*, 234.

(a) *Phelips v. Barrett*, 4 Pri. 23.

(b) *Rogers v. Reeves*, 1 T. R. 421.

(c) *Per L. Mansfield*, *Stotesbury v. Smith*, 2 Burr. 926.

(d) 2 Burr. 928.

(e) *Ib.*

(f) *Vanderhaden v. Britten*, 4 D. & Ry. 155.

there prescribed(s). For when he has accepted the security he is supposed to be saved harmless.

The sheriff is liable in an action for money had and received, if money be taken by his bailiff *colore officii*, who has his warrant from the sheriff, without showing that the money has been paid over to him (t).

The second branch of the statute requires a security by *bond* (u).

Respecting which there are three things to be observed ; Three forms observed in bond.

“ 1. That it be made to the sheriff himself.

“ 2. That it be made to him by his name of office.

“ 3. That it be conditioned for the defendant’s appearance at the return of the writ, and for that only.”

Therefore if the bond be not made to the sheriff, or it be not made to him by his name of office, or without condition, or with an impossible condition, or the condition be not for the defendant’s appearance, it is void (x). Bail-bond when good.

Where a bail-bond was without the words *ubicunque*, &c. although the *capias* was *Coram dom. rege ubicunque tunc fuerit in Anglia*, the defendant pleaded the stat.

H. 6, that the sheriff could take no bond but such as was to appear at the *place in the writ mentioned*; whereas this might be to compel an appearance out of *England*,

if the king should happen so to be. *Sed per Cur.*— “there

“ is no set form of words for these bonds ; but if in *sub-*

“ *stance they are to appear according to the design of*

“ *the writ*, it is sufficient” (y). On a *quo minus*, the

bond was to appear in the office of pleas in the court of Exchequer at *Westminster*, and held well enough, though the process was to appear before the barons: “we well

“ understand, that before the king, is meant before the king in his court, and not before the king in person” (z).

If a bond be taken to appear on a day *out of term*, it is void ; the statute need not be pleaded, nor the sheriff amerced (a). Phillips v. Phillips, in Seacc.

The general rule is to take the bond in double the sum sworn to. Bond in double the sum.

By 1 W. & M. s. 2. the sheriff ought *not to require excessive bail*. To remedy this, c. 2. s. 10. c. 29. s. 2.

the 12 G. 1. enacts, Shall take bail for no more than

“ That the sheriff, or other officer to whom the writ or pro-

(s) Pl. 67, a. (z) Shuttleworth v. Pilkington, 2 Str. 1155.

(t) Jones v. Perchard, 2 Esp. 507. (u) 1 T. R. 421. Cro. El. 862.

(x) 1 Str. 399. Dy. 119. (a) Mills v. Bond, 1 Str. 339.

(y) 2 Cro. 286. 2 Vent. 237. 2 Sid. 129. Ld. Ray. 353.

2 Show. 51. 2 Lev. 180.

sum indorsed on the writ.

“cess is directed, shall take bail *for no more than the sum*
“*indorsed on the back of such writ.*”

This statute is *directory* to the sheriff, and does not avoid the bail-bond, where there is no affidavit of the cause of action (*b*). Or when the sheriff takes bail for more than the sum sworn to (*c*).

If defendant in actual custody, to take bail.

Where the defendant is arrested on *mesne process*, and is in actual custody, it is his duty to take bail; and if a bail-bond be *tendered with sufficient sureties*, and the sheriff refuse to accept it, he is liable to a special action on the case (*d*).

If given to the sheriff of Durham.

A bail-bond given to the sheriff of *Durham*, under a writ immediately issued from the King's Bench to him, is now void; though the county palatine might have interposed, and claimed his privilege (*e*). Bail put in with the filacer of the county in which the defendant is arrested, on a *test. cap.* may be treated as a nullity, and an attachment issue (*f*).

Stat. 23 H. 6. to be pleaded.

It is laid down, that the stat. 23 *Hen. 6.* is a particular private law, and must be pleaded (*g*).

How much to take for bond.

“The sheriff or his officer by this act is to take no more
“for such obligation, warrant or precept, than 4*d.* And
“that all sheriffs, under-sheriffs, clerks, bailiffs, gaolers,
“coroners, stewards, bailiffs of franchises, or any other
“officers or ministers, which do contrary, shall lose to the
“party treble damages, and forfeit 40*l.*, one moiety to the
“king, and the other moiety to the party that will sue.”

s. 9.

Penalty for taking more than here allowed.

s. 11.

The fee for a bail-bond seems not settled; but I have heard that the sheriff is entitled to 4*s.* 6*d.* for a bail-bond; and if he attends out of his office, 6*s.* 8*d.*

Attorney undertaking.

If an attorney undertake to put in special bail to the sheriff, by consent of plaintiff's attorney, the court will enforce it by attachment (*h*).

Arrest in one county, and takes bond in another.

If the sheriff arrest a man in his own county, and afterwards carries him into another county, and there detains him until he hath given him a bond for appearance, this bond, it is said, is out of the statute (*i*).

If an undertaking be taken instead of a bail-bond.

If a sheriff's officer, upon an arrest, take an undertaking for the appearance of the defendant instead of a bail-

(*b*) 1 Burr. 330.

(*f*) *Clempson v. Knox*, 2 B. & P. 516.

(*c*) 2 Wils. 69. 1 H. Bl. 76.

(*g*) *Binson v. Welby*, 2 Saund.

(*d*) Gilb. C. P. 20. Cro. Car. 196.

155. 2 Burr. 928.

2 Vent. 92.

(*h*) 1 T. R. 422.

(*e*) *Jackson v. Hunter*, 6 T. R. 71.

(*i*) Cro. Jac. 745. Dalt. 525.

bond, *without the plaintiff's assent*, and bail above is not duly put in, the sheriff is liable to an action for an *escape*, and the court will not relieve the sheriff by permitting him to put in and justify bail afterwards (*k*). A sheriff's officer is good bail, unless excepted to, and cannot be treated as a nullity (*l*).

Agreements by third persons with the sheriff's officer to put in bail at the return of the writ, or to surrender the body of the defendant to the officer, or to pay debt and costs, or to give a bail-bond in due time, are illegal, and no action can be maintained on such agreements (*m*). And it seems that the sheriff or his officer cannot recover against the defendant for money paid, when he has discharged him out of custody without taking a bail-bond, and has been obliged to pay the debt and costs in consequence of the non-appearance of the defendant (*n*).

Agreement by third person will not do.

Sheriff letting defendant out of custody without bail-bond, and fixed with debt and costs, cannot recover money paid.

Cognovit discharges the sheriff.

If plaintiff take a *cognovit* in the action without notice to the sheriff it discharges him (*o*).

But where the plaintiff, at the desire of the sheriff's officer, (who had received the debt and costs), forbore to enforce the attachment, and accordingly did not apply to the sheriff for the debt and costs until ten days after, held that such indulgence did not discharge the sheriff (*p*).

It is sufficient to state in the condition the names of the parties, and the time and place of defendant's appearance; if the cause of action be added, it may be rejected as surplusage (*g*). Therefore, where, under an original writ in a *plea of trespass on the case on promises*, the sheriff took a bail-bond conditioned for the defendant's appearance, in a *plea of trespass*, it was held good. If a bond stated to have been taken 4th *November*, conditioned for appearance on the morrow of *All Souls*, 3d *November*, it is void by the statute (*r*).

What is sufficient to state in a bail-bond.

It is clear that the sheriff must take the bond *by the name of his office(s)*; and the court held in error, that it sufficiently appeared so, on the whole declaration being laid, "*solvend. eidem vice comiti & assignatis*" (*t*).

Must take bond in the name of office.

(*k*) *Fuller v. Prest*, 7 T. R. 109.

(*l*) *Banter v. Levi*, 1 Ch. 713.

(*m*) 1 T. R. 418. 4 East, 586.

(*n*) *Peake's C. N. P.* 143. 1 Esp. 383. 8 East, 171.

(*o*) 1 Taunt. 159.

(*p*) *Rex v. Sh. of Lond.*, 1 Taunt. 489.

(*q*) *Owen v. Nail*, 6 T. R. 702.

(*r*) 2 T. R. 569.

(*s*) *Cro. El.* 862.

(*t*) *Str.* 893.

Neither the place where bail-bond taken, or insufficiency of bail, traversable.

It has been held that neither the *place* where the *bail* was *taken*, nor the *sheriff's* intention to *deceive* the plaintiff of his *debt*, by taking insufficient bail, as alleged, is *traversable*. Therefore the bond may be taken *out of the county*(*u*). For if the arrest was traversable, it would be a way to avoid all bail-bonds civilly taken, without exposing the party to an arrest.

A bond made to the marshal to continue prisoner, good.

A bond made to the marshal, conditioned that if *A. P.* a prisoner in *B. R.* continues a prisoner, and in the safe custody of the plaintiff, or of his deputy, until he should be discharged lawfully, held good (*x*). For the prisoners of the *K. B.* being so numerous that the house cannot hold them, but are permitted to lodge within the rules, and consequently there is a good reason to take security for their true imprisonment (*y*).

If *capias* against defendant, third person gives bond to pay, good.

If a *capias* be taken out against the defendant, and a third person gives the plaintiff a bond that the defendant shall pay the money or render himself at the return of the writ, it is good, because it was by the direction of the officer (*z*).

Bill of Middlesex against three with *actiam*, jointly and severally, the sheriff takes bond for appearance of the three, bail-bond not according to statute, being for a joint appearance.

On a joint bill of *Middlesex* against three, with an *actiam super scriptum obligatorium* by them jointly and severally, the sheriff took one bail-bond for the appearance of them three, and there being no appearance, the plaintiff took the bond, and now would have had the sheriff amerced. It was agreed that the bail-bond was not according to the statute, being for a joint appearance to several actions (*a*).

Bond for appearance before process comes.

If the sheriff takes an obligation for the appearance of *J. P.* before process comes to him to arrest *I. S.*, and after the process comes, this obligation is good (*b*).

Mistake of the day.

Bill of *Middlesex* returnable on *Friday*; the condition of the bail-bond was, if the defendant appeared on *Saturday*; it was a void bond (*c*).

The sheriff having taken a bail-bond for appearance at the return of the writ, he is not liable to an action for an escape (*d*).

Where bail had been put with the filacer of a wrong county, the attachment ordered to remain ten days in the

(*u*) Sid. 96. pl. 24. Str. 444. 643.

(*a*) 6 Mod. 122.

(*x*) Lenthal v. Cook, 1 Saund. 161.

(*b*) Sid. 157. Keb. 554.

(*y*) Lev. 254.

(*c*) 1 Saund. 21, 22.

(*z*) 2 Mod. 305.

(*d*) 3 Salk. 314.

office, as a security, and if no bail above put in with the proper officer, then to issue (*e*).

Bail to the sheriff are discharged by defendant giving a *cognovit* for debt and costs (*f*).

If a defendant sued by a wrong name appears, and perfects bail by the right one, without identifying himself as the person sued, the plaintiff may either treat the bail as a nullity, and issue an attachment, or he may wave the misnomer at his option (*g*).

If a sheriff arrest defendant on an attachment *for want of appearance, or answer* in Chancery, or the Exchequer, or in the Exchequer of Pleas, *for want of appearance*, he may take a bail-bond in 40*l.* for the appearance of such defendant, but not for *costs*. And that upon appearance on the return of such writ by attorney, bond to be discharged; and the sheriff not to be amerced.

Where sheriff may take bail on process that does not express the cause of action.

13 Car. 2. st. 2. c. 2.

Of the Discharge of Defendant.

When the defendant is bailed, it is necessary for the officer to search the office, *for his own security*, if any detainers be against him; and a *reasonable* time is allowed for that purpose.

Sheriff to make search before he discharges.

But if a *discharge* comes from the plaintiff or his attorney, and a writ be found on such search against a person of the same name, the sheriff is to have time to make proper inquiry. And *Lord Kenyon* said, when a person is arrested, where no bail is given, the officer is not bound to search the office *until a written discharge comes from the plaintiff*. When, therefore, it becomes necessary for the officer to make such search, a *reasonable* time must be allowed him for that purpose, and twenty-four hours does not seem to be an unreasonable time, particularly when a writ was found apparently against the same defendant (*h*).

And to have a reasonable time to search the office for writs.

The sheriff cannot detain a party, after the plaintiff is satisfied, for the costs of the attorney (*i*).

Of the Assignment of the Bond.

The next thing is, if the defendant does not appear according to the condition of the sheriff's bond, the plaintiff may take an assignment thereof, if he thinks proper, pursuant to the stat. 4 *Ann. c. 16*.

Plaintiff may take an assignment of the bond.

4 *Ann. c. 16*.

(*e*) *Rex v. the Sh. of Midd.*, 1 Ch. 237.

(*g*) *Rex v. Suffolk*, 4 Taunt. 818.

(*h*) *Taylor v. Brander*, 1 Esp. 45.

(*f*) *Farmer v. Thorley*, 4 B. & A. 21.

(*i*) *Martin v. Francis*, 2 B. & A. 402.

In order to found proceedings against bail, the *ca. sa.* must be entered in the book at the sheriff's office, where it may be accessible to the bail; an entry in the secondaries book where writs are entered, being for a different purpose, is not sufficient (*k*); but it seems that any adequate means of apprising the bail the sheriff may adopt, are sufficient (*l*). The four days during which it must lie in the office are four entire days, exclusive of the day when lodged, and the return day (*m*). *Sunday* is not to be reckoned as one of them (*n*).

Assignment no new thing.

4 Ann. c. 16.
s. 20.

Sheriff, at request of plaintiff or his attorney, shall assign the bail-bond.

It seems that previous to this statute it was no new thing for the sheriff to assign his bond to the plaintiff (*o*); but then such assignment was not good, being a *chose in action*, yet the plaintiff might sue in the sheriff's name, and recover, provided the sheriff did not release to the defendant; to prevent which, it is enacted,

“ If any person shall be arrested by process out of the courts at *Westminster*, at the suit of a common person, and the sheriff or officer taketh bail, the *sheriff or other officer*, at the request and costs of the plaintiff, or his attorney, shall assign the bail-bond to the plaintiff in such action, by indorsing the same, and attesting it under his hand and seal, in the presence of two witnesses, without any stamp, provided the assignment be duly stamped before any action be brought thereon.”

It hath been held the bond may be assigned before forfeited, though it cannot be put in suit till afterwards (*p*). But, ruling the sheriff to bring in the body is an election to proceed against him, and the plaintiff cannot afterwards sue on the bail-bond (*q*). If the sheriff sue on the bond, he is not restricted to sue in the court where the original action was brought (*r*).

May be assigned to the king.

48 Geo. 3. c. 58.

Under sheriff's clerk cannot assign bail-bond.

Bail-bonds taken in actions at the suit of the king shall be assigned to the king.

On a case at the assizes, the question was, whether a bail-bond was well assigned by the under-sheriff's clerk? *Parker, C. J.* said, he had the advice of all his brothers, and they were of opinion that an under-sheriff himself

(*k*) *Hutton v. Beuben*, 5 M. & S. 869. *Howard v. Smith*, 1 B. & A. 223. 228.

(*l*) *Smith v. Parker*, 1 M. & Y. Ex. 483. (*o*) 1 Mod. 228.

(*m*) *Furnell v. Smith*, 7 B. & Cr. 693. (*p*) Barn. 77.

(*n*) *Dicas v. Perry*, 2 Dow. & Ry. 693. 151. (*q*) *Blockford v. Hawkins*, 1 Bing.

(*r*) *York v. Ogden*, 1 Pri. 174.

might assign a bail-bond in the name of the high sheriff, it having been the constant practice ever since the 4 *Ann.*; but that if the assignment was neither by the *high sheriff* nor his *under-sheriff*, it would not be good, and that being the present case, the defendant had judgment(s). *Sed. qu.*, if done in under-sheriff's office.

Sheriff or under-sheriff may assign the bail-bond *out of his county* (t). May assign out of the county.

The sheriff (although he be out of office) may assign the bail-bond given to him; in this case he does it as *late sheriff* (u). Late sheriff may assign.

If the bond be cancelled on defendant's return into custody *before* the return of the writ, no action can be maintained against the sheriff for not assigning such bond (x). This statute only meant that the sheriff should be compelled to assign such bail-bonds as were effectual. Where the defendant, before the return of the writ, offers to surrender himself to the under-sheriff, who refused to accept it, and subsequently assigned the bond, and the defendant rendered himself to the gaoler, the court stayed the proceedings (y). If bond be cancelled before return.

In an action against the sheriff for not assigning bail-bond (where in fact he had taken none) where bail had been put in and justified after action brought, and the plaintiff had not moved to set the justification aside, it was held that the action was barred (z). When bail is put in and justified after action brought against the sheriff for not assigning bail-bond.

The sheriff, denying that he has taken a bond, when in fact he has one, cannot be sued for an escape, but is liable, as for not assigning on request (a). Denying that he has taken one.

Of Bail on Capias utlagatum.

At common law the defendant could not have been bailed on a *cap. utl.* (b). And this case is particularly excepted out of the statutes 23 *H. 6.* & 13 *C. 2.* By the latter, it is expressly declared, that no sheriff, &c. shall

23 *H. 6. c. 9.*
13 *Car. 2. st. 2.*
c. 2. s. 4.

(s) 1 *Stra.* 60. *Kidson v. Fag*, 10 *Mod.* 288. *Tidd*, 248. 1808. (y) *Lewis v. Davies*, 5 *B. Moore*, 267.

(t) 2 *Stra.* 727. *Ld. Raym.* 1455. (z) 1 *Esp.* 87.

Fort. 556. (a) *Mendez v. Bridges*, 5 *Taunt.*

(u) *Fortes. Rep.* 364. 325, and 1 *Taunt.* 119. 2 *B. & P.*

(x) *Stamper v. Milbourn*, 7 *T. R.* 35. 246. 7 *East*, 607.

122. 6 *T. R.* 753. *Jones v. Lan-* (b) 3 *Burr.* 1484. 4 *Burr.* 2540.

der, *S. P.*

If any person be arrested on a *capias utlagatum* in K. B., sheriff, if no bail required, may take an attorney's hand to appear.
4 & 5 W. & M. c. 18. s. 4.

If it requires bail, sheriff may take bond with one or more surety for appearance by attorney, and do and perform, &c.
s. 4.

Persons taken as before shall be discharged, giving security after return of the writ.

s. 5.

In the Common Pleas, whether a sheriff can take bail on *capias utlagatum*, or not.

The sheriff cannot bail on an attachment for contempt.

discharge any person taken on a *ca. utl.* out of custody, without a lawful *supersedeas* first received. But now,

"If any person be outlawed, and arrested upon a *capias utlagatum*, in the *King's Bench*, (other than for treason or felony,) it shall be lawful for the sheriff (*in all cases where special bail is not required*) to take the attorney's engagement under his hand to appear for the said defendant, to reverse the said outlawries, and thereupon to discharge the said defendant from such arrest."

"And in those cases where *special bail* is required by the said court the said sheriff shall and may take security of the defendant by bond, with one or more surety, in double the sum for which bail is required, and no more, for his, her or their appearance by attorney in the said court, and do and perform such things as shall be required by the said court; and after such bond taken, to discharge the defendant from such arrest."

"If any person outlawed and arrested on a *capias utlagatum* shall not be able within the return of such writ to give security as aforesaid, (*in cases where special bail is required*), so as he or they are committed to gaol for default thereof, that whensoever the said prisoner or prisoners shall find sufficient security for his or their appearance to the sheriff by attorney, at some return of the term then next following, to reverse the said outlawry, and to do and perform such other thing and things as shall be required by the said court, such sheriff shall discharge the defendant out of prison."

This stat. has been construed not to extend to criminal cases, at least not to misdemeanors after conviction(c); nor is he bailable when taken upon *outlawry* after judgment.

Crompton(d) says, all persons on a *cap. utl.* in *C. P.* have been bailable since making of this statute, and before might have been discharged by *supersedeas*.

It seems the practice has been so upon inquiry at the sheriff of *Middlesex's* office, but I find no case on the point.

If the sheriff arrests on an attachment for contempt in any of the superior courts of law, he cannot take bail, but the party must put in bail before a judge to answer such contempt(e). *In other words, as is intimated, 2 B. 2.*

(c) *Rex v. Wilkes*, 4 Burr. 2539. (e) 2 Salk. 608. Stile, 234. Abr.
(d) *Crompt. Pr.* 26. *Sell. Pr.* 398. Cas. 29. 355.

But on an attachment *out of Chancery*, where sheriff had taken bail for the defendant's appearance, it was said by the Court, "We are of opinion that these bonds are "neither compellable to be taken, nor prohibited by the "statute, but that they are good at common law; and "that whether a bail-bond shall be taken or not is in the "discretion of the sheriff, as regulated by the practice of "that court." (*f*)

Of ruling the Sheriff to Return the Writ, and bring in the Body.

IT appears by 13 *E. 1.* & 23 *H. 6.* that sheriffs were tardy in returning their writs in due time: and by the former statute it is ordained,

Sheriffs tardy
in returning
process.
13 *E. 1. c. 39.*
23 *H. 6. c. 10.*

That a complaint should be made to the justices, and a writ should go unto them, to inquire whether such writ was executed or not; and if executed, and not returned, the demandant should have the damages awarded.

By the latter, if sheriffs return upon any person, *cepi corpus* or *reddidit se*, they shall have the bodies at the return of the writ.

If returned
cepi corpus, to
have body.

By rule *E. 6 Jac. 1.*

Every sheriff shall, before or immediately after the end of every term, return into court all writs directed and delivered, and in default expect judgment for contempt.

To return writs
into court be-
fore or after end
of term.

Notwithstanding which, sheriffs, bailiffs of liberties, and their deputies, delayed execution of process, and return thereof; for preventing of which, a rule was made, *Mich. T. 1654. s. 2.* whereby the Court ordered,

Notwithstanding
which they
delayed.
K. B. & C. P.

If it should appear that any such officer should wilfully delay the execution, or return of process or execution, or having levied money, should detain it after the return, besides the ordinary course of amerciamment, &c. an attachment, &c. should be, as the case requires.

In the Exchequer, ruling the sheriff is merely for the purpose of bringing him into contempt, and may be waived by taking an assignment of the bond (*g*).

If the plaintiff accept the bail-bond, he cannot have a rule to return the writ, provided the bond is valid (*h*); and where the plaintiff had taken an assignment as to two

(*f*) *Morris v. Hayward*, 6 Taunt. 509.

(*g*) *Lewis v. Arnaboldi*, 1 Jerv. & Cr. Ex. C. 97.

(*h*) 1 Salk. 99. 2 Salk. 57. *Ld. Brooke v. Stone*, 1 Wils. 223.

defendants, and the sheriff had returned *non est inventus* as to a third, an attachment for not bringing in the body was refused (*i*).

Within what Time to Return the Writ.

In London and Middlesex to return in four days.

In *London* and *Middlesex* the sheriff must return the writ *within four days next after service* of the rule upon him or his under-sheriff, or an attachment shall issue against such sheriff, without giving a day to show cause against such attachment (*k*).

In any other county six days.

And in any *other* county, city or town, the sheriff is to return his writ *within six days* next after service of such rule on him or his under-sheriff, or an attachment shall issue (*l*).

Where rules may be served in town.

The rules on the sheriffs of *London* or *Middlesex* may be served at the usual office ; and so on the agent of *Surrey*.

Where in any other county.

But with respect to the sheriffs of other counties, &c. the *rule* must be served on the respective *under-sheriffs*. The rule must not be served on the agent of the under-sheriff of *London*, *Middlesex* or *Surrey*, but *at the office only*; because the offices of the agents for these under-sheriffs are, in truth, considered as the offices of the under-sheriffs themselves (*m*).

Writ to be returned on the day on which rule expires.

And by rule, *M. 32 G. 3. B. R.* it is ordered, that all writs shall be returned *on the day* on which the rule for returning them shall expire ; and in default thereof, the plaintiff shall be at liberty to move for an attachment on the *next day*. This rule arose out the case of *Rex v. Sh. of Surrey*, where the sheriff had not returned the writ till the morning of the *seventh* day, although before the sitting of the court (*n*).

If special bailiff need not return writ.

Where a *special bailiff* has been nominated by the plaintiff, or his attorney, the sheriff is not bound to return the writ; and should the usual rule be made, the court, on motion, will discharge it (*o*).

Custos brevium to indorse the day and hour same filed.

And in order to ascertain the true time of making the return of such writ, the *custos brevium* of the court of King's Bench is required to indorse, on *every writ*, on *what day and at what hour* the same was *filed* (*p*).

(*i*) Anon. 2 Ch. R. 391.

(*m*) R. v. Coles, Doug. 420.

(*k*) Rule, T. 6 Geo. 3. B. R.

(*n*) 4 T. R. 496.

H. 7 Geo. 3. C. P.

(*o*) Hamilton v. Dalziel, 2 Bl. R.

(*l*) R. T. 5 & 6 Geo. 2. B. R.

952; and De Moranda v. Dunkin,

Rule, Hil. 8 Geo. 1. C. P. R. II.

4 T. R. 119.

32 Geo. 3. Exch.

(*p*) Rule, T. 30 Geo. 3. B. R.

If there be *no return*, it is a contempt, for which the court, on an affidavit of service of the rule, will grant an attachment. If writ be not returned.

A rule to return the writ must be sued out in term, if not it will be irregular (*q*). Must be taken out in term.

When the rule expires in vacation the sheriff need not return the writ till the first day of the ensuing term (*r*). Where rule expires in vacation.

But there is a distinction between the practice of the courts of K. B. and C. P., in the latter it being held that as the office is open during the vacation the sheriff is bound to return the writ at the expiration of the rule, and cannot wait till the ensuing term (*s*). And the same rule prevails in the Exchequer (*t*).

If the rule be served on the last day of term, the bail have the whole of the first day of the next term to justify; and if the defendant surrender on any part of that day in discharge of his bail, no attachment can issue (*u*).

Within what Time to bring in the Body.

By the like rules, where the sheriff has returned *cepi corpus* on the writ, if it be in *London* or *Middlesex* he must bring in the body within four days after service of the rule for that purpose, or an attachment shall issue. If it be in any *other* city or county, then within six days *after* service of such rule. If sheriff has returned *cepi corpus*.

This rule is to be served in like manner as the rule to return the writ. The intent of this rule, where the defendant is not in custody, is to compel the sheriff to *put in and perfect bail above*. And exception must be made before the body rule can be served on the sheriff (*x*). The intention of the rule.

This rule cannot be taken out till the *day after* the expiration of the rule to return the writ, if bail be put in in due time (*y*). For it is necessary that the proceedings against the sheriff should keep pace with the time allowed the defendant for putting in and perfecting bail, otherwise Rule to bring in body cannot be taken out till the day after the expiration of the rule to return the writ,

(*q*) *Rex v. Sh. of Cornwall*, 1 T.R. 552.

(*u*) *Rex v. Sh. of Midd.*, 8 T. R. 464.

(*r*) *R. v. Sh. of Berks*, 5 East. 386.

(*t*) *R. v. Midd. Sh.*, 6 Dow & Ry. 264.

(*s*) *Rex v. Sh. of Midd.*, 5 Taunt. 647. 1 Marsh. 270.

(*y*) *Hutchins v. Hird*, 5 T. R. 479. *Spicer v. Linnel*, C. P. E. 23 Geo. 3. *S. P. Rolfe v. Steele*, 2 H. Bl. R. 276.

(*i*) *Smith v. Blyth*, 9 Pri. 255.

except where bail is not put in in due time.

It is no excuse for sheriff to say he took a bail-bond, he must have the body ready.

Sheriff may, on receiving this rule, put in bail, and justify, and render.

To prevent rule to bring in body, sheriff should return him in actual custody.

Bail may now render the principal before the return of a rule against the

this inconvenience might ensue, that the sheriff might be fixed with the payment of the debt and costs; and upon his bringing an action against the defendant, or his bail, on the bond, they might plead *comper. ad diem* (z).

Upon the rule to bring in the body, it is no excuse that the sheriff had taken a bail-bond, and had permitted the defendant to go at large. For it is at the peril of the sheriff, if he takes bail on the stat. *H. 6*, and the party is not concluded thereby; the sheriff must either bring in the body, or justify good bail in court (a), or render, pursuant to the new rule.

But after the plaintiff had assigned the debt to a trustee, and given notice to the sheriff, with a written authority, to discharge the defendant, the court, although the sheriff ought to have required an indemnity, refused a rule to bring in the body (b).

And the court refused to enlarge the time for perfecting bail, or permitting the sheriff's bail to render, when the defendant was, after bail to the sheriff, committed to criminal custody, and was waiting the judgment (c).

The sheriff, when ruled to bring in the body, may put in bail for the defendant without his consent, and justify the same, to prevent an attachment: and the bail may afterwards render the defendant (d).

And an irregularity or defect in the notice of bail by the sheriff will not render it a nullity, so as to found a motion for an attachment for not bringing in the body (e).

The sheriff, if defendant is *in custody*, should return him in *actual custody*, which prevents the rule on him to bring in the body (f), otherwise he must move to discharge that rule on an affidavit of the fact.

By the former practice of the court of K. B. the bail put in for the defendant in any action could not render such defendant after a rule had been granted against the sheriff *to bring in the body*, before such bail had justified them-

(z) 8 East, 525. 2 East R. 241.

(a) Lee, C. J. Wolfe v. Collingwood, 1 Wils. 262.

(b) Hookham v. Moore, 6 B. Moore, 497.

(c) Joyce v. Pratt, 6 Bing. 378.

(d) Rex v. Butcher, Peake's N. P. C.

169. Hamilton v. Jones, 6 Bing. 628.

(e) Pugh v. Emery, 4 D. & Ry.

30.

(f) Macloed v. Marsdon, Barnes,

32.

selves in open court: but now, by rule of court 33 G. 3, bail shall and may be at liberty to render the defendant, notwithstanding such rule, at any time before the expiration thereof; the attorney for the defendant giving notice of such render to the plaintiff's attorney without delay, and making affidavit thereof (*g*); which is now further fully provided for by 1 W. 4, whether the defendant be in custody or not. And if bail are put in and justified before that time, they are entitled to enter on the recognizance *comp. ad diem*, or to enter an appearance generally, which is to be taken according to the exigency of the writ (*h*).

sheriff to bring in the body, before they have justified, giving notice of such render.

c. 70, s. 21, 22.

In consequence of this rule, a motion was made on the construction of it, whether the sheriff could put in bail, in order to comply with the rule to bring in the body, without justifying. The court held the sheriff not obliged to justify his bail, and that the above rule extends to the case of the sheriff (*i*). The C. P. have also held, that though a rule to bring in the body has been served, bail may be put in, and render without justifying (*k*).

This rule extends to the case of the sheriff.

The sheriff may put in bail in the Exchequer for his own protection by a different clerk in court, and without any notice to the plaintiff's clerk in court (*l*).

And the C. P. held, that though the rule to bring in the body has expired, yet if the defendant justifies bail *before* the plaintiff *move for an attachment* against the sheriff, it is time to prevent the attachment; and the court will not allow the plaintiff to take advantage of the priority of his motion on the same day (*m*).

May justify in C. P. before attachment moved for.

But the K. B. have held, that if the sheriff be *once* in contempt for not bringing in the body, that contempt is not purged by the defendant's surrendering on a subsequent day, though *before* an attachment is moved for against the sheriff (*n*).

But in K. B. it is otherwise.

So where the defendant died after the sheriff was in contempt for not bringing in the body, held that an attachment might still issue (*o*).

(*g*) R. T. 33 Geo. 3. B. R.

(*m*) Thorold v. Fisher, 1 H. Bl. 9.

(*h*) Whittle v. Oldaker, 7 B. & Cr. 478; overruling Bond v. Evans, 4 B. & Cr. 864.

2 B. & P. 38.

(*i*) Rex v. Sh. of Midd., 7 T. R. 527.

(*n*) Rex v. Sh. of Midd., 3 T. R. 29.

(*o*) *Semb. contr.*, Rex v. Sh. of Midd., 2 M. & S. 562. Rex v. Sh. of Midd., 3 T. R. 133.

(*k*) Hall v. Walker, 1 H. Bl. 638.

(*l*) Hopkins v. Peacock, 5 Pr. 558.

Contempt not incurred by sheriff till the last day to bring in the body.

But it has been said that the contempt is not incurred by the sheriff until the day on which the rule to bring in the body is passed, for the sheriff has the *whole of that day* to render (*p*); and where the party surrendered after the essoign day, but before the actual day of business in court, the attachment was set aside on payment of costs, and the return allowed to be amended (*q*).

If sheriff's officer take undertaking, and bail above is not put in in due time, and action against sheriff, he cannot justify his bail.

If the sheriff's officer take an undertaking to put in bail instead of a bond, without the assent of the plaintiff, and bail above is not put in in due time, the plaintiff may sue the sheriff for an escape, and after such suit commenced, the court will not permit the sheriff to justify bail, although he offer to pay costs of the action brought against him (*r*.) But where the officer had allowed the party to go at large without taking a bail-bond, and without the plaintiff's consent, the court refused to allow him to surrender, or the bail to justify, or to set aside the attachment (*s*.)

C. P. will not permit defendant to justify new bail after an action for escape brought for neglecting to take bail-bond.

So where the bail had been rejected, where no *bail-bond taken*, and the plaintiff brought his action for an escape, new bail was offered to justify by defendant; the C. P. held, that as the sheriff had neglected to do his duty, he ought not to be relieved; for the court could not too strongly mark his conduct in omitting to follow the directions of the statute, and rejected the bail (*t*).

Where the omission to take a bail-bond was attributable to mistake, the court, upon an affidavit of merits and no collusion, let him in to defend, the attachment remaining as a security (*u*). But to entitle him to such indulgence, the affidavit of merits must be made by the defendant himself, although, under circumstances, the court may waive that and impose terms (*x*).

So where the sheriff had neglected to take a bail-bond, the defendant being in custody in several other actions, the court refused to stay proceedings in the action for an escape, on the terms of paying costs in that action, and charging the plaintiff in custody in the original action (*y*).

(*p*) R. v. Sh. of Essex, H. 36 G. 3.
B. R. See also 1 B. & P. 603.

(*q*) R. v. Sh. of Wilts, 1 Bing. 423.

(*r*) Fuller v. Prest, 7 T. R. 109.

(*s*) Collins v. Snaggs, 6 B. Moore,
111.

(*t*) Webb v. Matthew, 1 B. & P.
225.

(*u*) 1 Ch. 721.

(*x*) Id. 722.

(*y*) Birn v. Bond, 6 Taunt. 554;
and 1 Bing. 156.

Where the writ was returnable the 1st of *June*, sheriff ruled to return it the 2d, and on the 8th he returned *cepi corpus*, on which the plaintiff's attorney, *same day*, served him with a rule to bring in the body, and on the 15th obtained an attachment: the court of K. B. held the proceedings regular, although it was objected the sheriff had all the *eighth* to return the writ, and consequently, that the rule to bring in the body should not have been served till the *ninth*; for in this case the *time* for putting in bail *had expired before* the service of the rule to bring in the body (*z*).

If bail be not put in in time, the rule to bring in the body may be served the day writ was returned.

A motion for an attachment against the sheriff in K. B. ought to go on the crown-side of the court, and if moved to be set aside, the affidavits are to be *intituled*, *The King against the Sheriff of* — (*a*).

The motion for attachment to go on the crown side.

The writ of *hab. corp.* to bring up the body of the sheriff on an attachment, returned by the coroner, *cepi corpus*, is of course before a judge at chambers, and without affidavit (*b*).

The motion must be grounded on an affidavit, stating that the rule was served *personally* on the under-sheriff, and the *original rule* shown him at the same time (*c*). So also in C. P.

The affidavit to ground motion for attachment.

And an attachment may be moved for not bringing into court the body on the *last day of the term*, at the rising of the court (*d*). So in C. P.

May be moved last day of term.

If the rule for the allowance of the bail be *not* served, an attachment may be moved for against the sheriff (*e*). So it may issue where bail rejected, and no notice of render (*f*).

If rule for allowance of bail be not served.

If one of the bail put in be an attorney, there *need no exception*, but the plaintiff may go on with his rules, the court considering such a bail *as no bail*, and on that account an attachment for not bringing in the body was refused to be set aside (*g*).

If an attorney be bail, he is considered as no bail.

If a *verbal* exception be given to bail, although properly entered in the filazer's book, the *sheriff* may take

The sheriff is not liable if proceedings are

- (*z*) Parker v. Wall, M. 26 Geo. 3. (e) Rex v. Sh. of Midd., 4 T. R.
 (a) 3 T. R. K. B. 133. 253. 493.
 7 T. R. 439. (f) R. v. Sh. of Midd., 2 D. & R.
 (b) R. v. Whaley, 1 Ch. 49. 225.
 (c) R. v. Smithies, 3 T. R. 351. (g) Ritchie v. Gilbert, E. T. 33
 (d) 1 Burr. 651. 1 B. & P. 312. Geo. 3. C. P.
 3 T. R. 351.

not strictly regular; a *verbal* exception to bail instead of a written one.

advantage of it, and set aside the attachment for not bringing in the body: for where there are two parties, and one of them takes a step, previous to which the other ought to have taken a step, the former waves the obligation which the latter was under, as between themselves, but not as relating to a *third* person: here the waver by the defendant, if it were one, was not a waver by the *sheriff*. The rule ought to be *strictly* followed, to prevent confusion (*h*).

And where bail are put in in due time, there must be an exception entered before an attachment can issue for not having justified in due time; and the having added new bail does not supersede the necessity of such exception (*i*).

And an attachment moved for, after a summons for payment of debt and costs, held irregular (*k*).

The four days are reckoned one *inclusive*, the other *exclusive*, if Sunday intervenes.

The rule to bring in the body is one day *exclusive*, and the other *inclusive*, therefore an attachment cannot be moved for until the morning of the fifth day. If the rule be served on the *Wednesday*, an attachment cannot be moved for until the *Tuesday* morning following (*l*). *Sunday*, being the last day, is considered as no day.

Sheriff must move to set aside an irregular attachment same term granted.

Although an attachment is irregular, if the rule to bring in the body issues before the time for perfecting bail, the sheriff cannot move in the *next term* to set it aside for irregularity (*m*). He must take advantage of it as early as possible.

But need not justify bail.

But the sheriff may move to set aside the attachment before he justifies bail, if the ground of objection is that the attachment was moved for too soon (*n*).

And the court will not allow the plaintiff to resort to the sheriff after an unreasonable time has elapsed, although the delay arose by an offer of compromise from the defendant (*o*).

Where plaintiff had elected to proceed against the sheriff for the false return, the court refused to compel him to bring in the body to enable the plaintiff to proceed in the original action for costs (*p*).

(*h*) Cohn v. Davies, 1 H. Bl. R. 276. (*m*) Rolfe v. Steele, 2 H. Bl. R. 276.

(*i*) Rex v. Sh. of Midd., 8 T. R. 258. (*n*) 1 New R. 139.

(*k*) R. v. Midd. Sh., 5 B. & Al. 111. (*o*) Rex v. Sh. of Lond., 1 Taunt.

746. (*p*) Berwick v. Walton, 2 B. & A. 623.

(*l*) North v. Evans, 2 H. Bl. R. 36.

Where several rules to bring in the bodies of several defendants, the safe rule is to issue several attachments (*q*).

When several defendants.

Of proceeding against the late Sheriff.

The late sheriff is now liable to be called on to return his writ, and bring in the body, in the same manner as the present sheriff, by rules of court; and he is bound to make his return at any time within six months after the expiration of his office. But he is not liable on request only, he must be served with a rule for that purpose (*r*), within the time. The months are lunar months, and the day of the sheriff quitting his office is reckoned as one (*s*).

Late sheriff liable to be called on to return the writ within six months after he is out of office, by rule of court, and also by rule to bring in the body.
20 G. 2. c. 37. s. 2.

Formerly he was obliged to proceed by *distringas*.

The return of the late sheriff relates only to the time of his quitting office; and a mere acceptance of the return made to his warrant is not a sufficient recognition that the person whose name appears on the back of the writ is his officer (*t*).

A *latitat* was sued out 29th Nov. 1796, directed to the late sheriff of *Surrey*, returnable 23d Jan. 1797, on which the defendant was arrested, and a bail-bond given. The 24th Jan. he was served with a rule to return the writ;—he returned *cepi corpus*;—after that time no proceedings were had until Mich. 1797, when the above sheriff was ruled to bring in the body, and a rule for an attachment granted, which was issued. Motion in this term to set it aside, the affidavit stating both the bail to have become insolvent, and defendant absconded. The court said, that though there was no decided case on this subject, it was highly unreasonable that the sheriff should be called upon at this distance of time, when the bail and defendant had both become insolvent; and made the rule absolute (*u*); there the court set aside attachment on the ground of unreasonable delay. But query, when the plaintiff has no other remedy, and the sheriff has suffered no prejudice by the delay (*x*).

If the plaintiff delay his proceeding against the sheriff, and the bail become insolvent in the mean time, court will discharge a rule to bring in the body.

Although the sheriff go out of office after he has been served with a rule to bring in the body, and a new sheriff

Sheriff, although he goes out of office, must

(*q*) *Constable v. Bristow*, 7 Moore, 162. (*u*) *R. v. Sh. of Surrey*, 7. T. R. 452. B. R. M. 38 Geo. 3. See

(*r*) *Rex v. James*, 2 T. R. 1. also 9 East, 467.

(*s*) *Doug.* 463.

(*t*) *Fonsec v. Magnay*, 6 Taunt. 366. (*x*) *R. v. Sh. of Midd.*, 2 Bing.

bring in the body, if ruled.

appointed, if he does not justify bail *in due time* he is liable to an attachment (*y*).

So although he may be out of office before such rule be granted (*z*).

As to staying Proceedings against the Sheriff after Attachment.

If attachment was once granted formerly, could not set it aside.

Formerly it was the practice that when once the attachment was granted, the bail could not justify (*a*); nor could the attachment be set aside; but the utmost the defendant could do was to apply to the court, on an affidavit of merits, to be let in to try on terms, first justifying bail; and consenting that the attachment should remain in the office as a security.

The court will not discharge the attachment against the sheriff for gross laches on the part of the plaintiff (*b*).

But now it may, if no trial lost, without the attachment lying in the office as a security.

But the practice is now otherwise; for if the plaintiff has *not* lost a trial, the court will, "on an affidavit of the merits," set aside the attachment, upon perfecting bail, and paying costs (*c*), and what costs are required on such applications (*d*).

The rule, that the attachment shall stand as a security, when a trial has been lost, means only such trial as would have entitled the plaintiff to a judgment of the same term, and does not therefore apply to actions by original, where the *distringas* cannot be returnable until the ensuing term (*e*).

But if a trial be *lost*, it must stand as security.

But if a trial be lost, the court will further require that the attachment shall remain in the office, and stand as a security for the sum recovered (*f*).

Sheriff omitting to take a bail-bond, may be let in to defend and try the merits, upon affidavit that it was owing to mistake, and no collusion, the attachment to stand as a security (*g*). So where he had taken a bail-bond executed by one only (*h*). But where the officer, after allowing the defendant to go at large, put in bail

(*y*) Meekings v. Smith, 1 H. B. R. 629.

(*z*) Reg. Gen. 4 T. R. 379.

(*a*) Loft. 438.

(*b*) 2 Ch. R. 58.

(*c*) Hill v. Bolt, 4 T. R. 352; and see 1 Bos. & P. 325, 334.

(*d*) 2 B. & P. 38; 3 B. & P. 603; and 1 Taunt. 56.

(*e*) R. v. Sh. of Lond., 1 Ch. 357.

(*f*) Gravett v. Williams, 4 T. R. 352; and 1 M'Clel. Ex. R. 83. 13 Pri. 262.

(*g*) 1 Ch. 237. 721.

(*h*) 2 Bing. 227.

without his consent, or knowledge of the plaintiff; and afterwards took him into custody before the time for bail had expired, the court discharged the party, and made the officer pay costs (*i*).

But the defendant himself must make such affidavit of merits.

And the sheriff is bound to come as soon as possible to relieve himself from the attachment (*k*).

Where the application is made by the sheriff, it cannot be expected that he should make an affidavit of merits; but the court will require an affidavit to be made on his part, "*that the application originated from him, and not made in collusion with the defendant:*" if that be done, the plaintiff will have no reason to complain, as he will be put in the same situation that he was originally entitled to be in (*l*).

If application be made by the sheriff, what affidavit will be requisite to be made.

He may now render. And the court held (*m*) that it ought to require either an affidavit of merits, or that the application is made on behalf of the sheriff or bail, without collusion with, or indemnity from, the defendant in the cause.

The render is complete to discharge bail, and prevent the attachment from issuing against the sheriff, without any affidavit of the service of notice of render. That is only necessary in order to get the bail-piece out of the office (*n*).

Nor need any entry of the *committitur* be made for this purpose in the marshal's book.

The rule in *Tidd*. p. 281, 6th ed. said not to be supported by the authorities; and that the distinctions in this respect are, 1st, Upon a render in discharge of bail, the *committitur* is made out by the judge, and delivered with the prisoner to the marshal; and the clerk of the papers ought to enter it in the marshal's book: 2. When defendant is already in custody, and the custody to be changed, the *committitur* is entered with the clerk of the judgments, and not with the clerk of the marshal; but the *committitur* itself is left with the marshal: 3. Where the defendant is removed to be charged in execution, the

(*i*) 1 Bing, 367.

(*k*) Lee v. Cary, 1 Ch. 180.

(*l*) R. v. Sh. of Surrey, 7 T. R.

239.

(*m*) R. v. Sh. of Midd., 3 M. & S. 299.

(*n*) R. v. Sh. of Midd., 2 B. & A. 607.

judge makes out the *committitur* by *hab. corp.* with which he is carried to the prison; and then no entry of it need be made in the marshal's book (*o*).

The court staying the proceedings will only permit the parties to try the validity of the debt; a plea of bankruptcy, *puis darr. cont.* was set aside, and defendant restrained to the general issue. *Semb.* if there had been an affidavit that the defendant was no party to the former application, they might have relieved him by rescinding the former order (*p*).

If the sheriff has taken an undertaking instead of a bail-bond, court will not consent.

Nor can he recover of the defendant.

If it appear that the sheriff has taken an *undertaking* instead of a *bail-bond*, the court will not consent, because the sheriff has been guilty of a breach of his duty (*q*). So if the officer has taken money in lieu of bail (*r*).

Nor can he recover the debt and costs of the defendant in an action for money paid (*s*).

The same practice is established in the C. P. (*t*); and the court said, if the plaintiff had taken an assignment of the bond, instead of resorting to the sheriff, as the proceedings would have been staid by perfecting bail, and paying the costs, it was reasonable that the same indulgence should be allowed the sheriff, and that the practice should be uniform. When the sheriff is fixed for not bringing into court the body, and wishes to go *no farther*, by trying the merits, the courts will only relieve him by payment of the whole debt and costs (*u*).

When sheriff fixed for not bringing into court the body, and wishes not to try, he cannot be relieved but by payment of debt and costs.

He is not, however, liable beyond the penalty of the bail-bond (*x*).

The sheriff, upon an attachment, is liable only to the extent which the plaintiff might have recovered if he had proceeded to judgment and execution: in an action against the acceptor, the court declared the practice in *London* to charge the sheriff with costs of the actions against the drawer and indorser to be unreasonable (*y*).

But where there are circumstances which induce a suspicion of fraud in the parties to obtain a priority of exe-

(*o*) Per Bailey, J., 2 B. & A. 607.

(*s*) 8 East, 171.

(*p*) Dowson v. Levi, 4 B. & A.

(*t*) Callan v. Tye, 2 H. Bl. R. 235.

249.

(*u*) Heppell v. King, 7 T. R. 370.

(*q*) R. v. the Sh. of Surrey, 7 T. R. 239; and Fuller v. Prest, 7 T. R.

Fowlds v. Mackintosh, 1 H. Bl. R. 233.

109.

(*r*) 3 East, 604.

(*r*) Vanderhaden v. Britten, 4 D. & Ry. 155.

(*y*) R. v. Sh. of Lond., 2 B. & A. 192.

cution, or in the sheriff's officer, the court will not discharge an attachment but upon payment of the *whole debt and costs* (z). So also, since the stat. 43 G. 3. 43 G. 3. c. 46. (which enables him to take the money at the time of the arrest) he has been held liable for the whole (a).

Where there has been any arrangement or collusion between the officer, and the plaintiff or his attorney have acquiesced, the court will protect the sheriff; as where the money was in fact paid over, with the plaintiff's knowledge, to the assignees of the debtor, become bankrupt, (plaintiff being one), the court refused to order him to pay it over again, though he had returned that he had the money in his hands (b).

So where the officer had given time, the plaintiff having assented, and received part of the money (c).

So where plaintiff had appointed a special bailiff, or given specific directions.

But where the bail were parties to the agreement, and the sheriff had been attached, the court refused to set it aside (d).

Where the sheriff delayed selling the goods, under the direction of the plaintiff's attorney, and in the interim they were taken under an extent, the court refused to fix the sheriff, and quashed the *distringas* which had issued (e).

If plaintiff, after attachment, be guilty of unreasonable delay, the court will set the attachment aside; but not if the delay is by the desire of the sheriff or his officer (f).

The court set aside an attachment on an affidavit that the plaintiff kept the defendant out of the way, to prevent the sheriff retaking after a rescue; that the application was in his own behalf, and without collusion, though it did not negative an indemnity (g).

By a Reg. Gen. the rule for setting aside attachments for not bringing in the body, or for staying proceedings on the bail-bond, are not to be granted, unless grounded upon an affidavit of merits; and where applied for by the

When attachment may be set aside on account of plaintiff's laches.

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| (z) R. v. Sh. of Midd., 1 H. B. 543. | (e) Ruston v. Hatfield, 3 B. & A. 204. |
| (a) R. v. Sh. of Lond., 9 E. R. 316. | (f) 1 Taunt. 489. 3 B. & P. 151. |
| (b) Tomlinson v. Shynn, 2 Br. & B. 77. | 9 East, 467. |
| (c) R. v. Sh. of Lond., 1 Ch. 613. | (g) R. v. Sh. of Midd., 1 B. & A. 192. |
| (d) R. v. Sh. of Midd., 1 D. & Ry. | |

original defendant, or on behalf of the sheriff, or any officer, or of the bail, that it is truly made on the behalf of such sheriff, &c. at his and their proper expense and only indemnity, and without collusion (*h*).

The affidavit made by bail to set aside an attachment must strictly pursue the rule of *Mich. 59 G. 3*; held, therefore, bad, when it omitted to state that the application was made for *their only* indemnity, and at their expense (*i*).

Preceding and succeeding Sheriff; Acts necessary to be done by each.

IN strictness the sheriff ought to return his writ *executed*, and previous to his going out of office, and file the same with the *custos brevium* (*k*).

New sheriff not chargeable before delivery. For what prisoners the new sheriff shall be chargeable.

The new sheriff is not chargeable with things which are executed before that they are delivered over to him by the old sheriff (*l*). For if the old sheriff takes a man in execution, and afterwards a new sheriff is made, and before the old sheriff delivers his prisoner to the new sheriff the prisoner escapes: here the old sheriff only is chargeable for this escape, and not the new sheriff; for the new sheriff shall not be chargeable for any other prisoners than what are delivered over to him by indenture (*m*).

If old sheriff, after he is discharged, shall make warrant, and officer arrests.

If the old sheriff, after he is discharged, shall make his warrant or precept to any of his late bailiffs or officers to arrest another, and the officer by force thereof shall arrest the party, an action will lie against both the sheriff and officer (*n*).

Old sheriff returned proclamation, after that discharged, outlawry void.

The old sheriff returned the proclamation upon an *exigent*, after that, he was discharged of his office; and, by the judgment of the court, the outlawry was held void, and the party discharged (*o*).

If writ be executed in old sheriff's time, how return to be.

If a writ, directed to the sheriff, is executed, and afterwards a *new sheriff* is elected, the successor (*if the writ be returned over to him*) ought to return the writ with the *old sheriff's* return thereon, and that he received the writ as above indorsed from his predecessor (*p*).

(*h*) 2 B. & A. 240.

vidson v. Seymour, 1 M. & Malk.

(*i*) R. v. Sh. of Midd., 1 Ch. 347. 34.

(*k*) R. E. 6 Jac. 1 K. B.

(*n*) Dalt. 18. Cromp. Co. 205.

(*l*) Cro. El. 365.

(*o*) Dyer. 41.

(*m*) Hob. 266. 1 Bulstr. 70. 79.

(*p*) 2 Roll. Abr. 457. Dalt. 516.

2 Leon. 54. 4 East, 606; and Da- Bulstr. 70.

The rule now is for the late sheriff to make his return ; but the return of the old sheriff relates only to the day of his quitting office ; and to make him liable for misconduct of the officer employed, it must be shown that such misconduct was during the time of his office(*q*).

If the old sheriff, after arresting the defendant, suffer him to escape, and then go out of office before the return day, he alone is answerable (*r*) ; and if the new sheriff returns by mistake *cepi corp.* to such writ directed to the old sheriff, and afterwards the latter is ruled to return the body, and an attachment issues; held to be an irregularity, but was waved on account of the lateness of the application to set it aside.

If the return of the old sheriff happen to be erroneous, and that a new sheriff be chosen, the court may cause the old sheriff to amend the same(*s*).

Sheriff sold goods upon a *fi. fa.*, and upon a *vend. exponas* he returned, *that he could not find buyers*, then his office determined, and he still detained the goods in his hands ; the plaintiff may have a *distringas* directed to the new sheriff to distrain, the old one to sell, and deliver the money to the new sheriff to bring it into court (*t*), which is the most usual writ.

Upon a return that he had distrained to the value of 40*s.* and further delay, the court increased the issues to 100*l.*(*u*).

If money be paid to the old sheriff, and he is discharged before the return of the writ, the party shall not be compelled to pay it again ; but the plaintiff may have his remedy against the ancient sheriff (*x*).

By 3 *G.* 3.

writ, &c., not to

Old sheriff to amend his own return.

Sheriff sold goods on *fi. fa.*, and on *vend. exponas* returned, want of buyers, then his office determined, and he detained the goods, no other remedy but *distringas*.

If money be paid to the old sheriff, and he is discharged before return of writ, &c., not to pay again.

c. 15. s. 9.

When a sheriff shall, by process out of the Exchequer, extend any goods, &c. into the hands of His Majesty, for any debt due to the crown, and shall die, or be superseded before a *vend. exponas* be awarded for sale, or before he has made actual sale thereof, and a writ shall be afterwards awarded to a subsequent sheriff, who shall make sale of such goods, the Barons of the Exchequer, &c. shall settle the fees, &c.

new sheriff, who shall make sale, Barons to settle the fees.

When sheriff shall extend goods, &c. for debts due to the crown, and dies before *vend. expon.* &c. and writ awarded to settle the fees.

(*q*) *Fonsec a. Magnay*, 6 Taunt. 231.

(*t*) 6 Mod. 299.

(*r*) *R. v. Sh. of Midd.*, 4 E. R. 604.

(*u*) *Phillips v. Morgan*, 4 B. & A. 652.

(*s*) *Dalt.* 19, cites 33 H. 6. 40.

(*x*) *Cro. El.* 208, 209. pl. 4. Sav. 123. *Ander.* 217. pl. 260.

Warrant to bailiff of a franchise served, and before return bailiff removed, and new one elected, return to be made by the new bailiff.

It is said, if on a warrant directed to the bailiff of a franchise to execute a writ which is served, and afterwards, and before the return thereof, the bailiff is removed, and a new one elected, the return to the sheriff shall not be in the name of the elder bailiff, but of the new bailiff, for the elder bailiff is now a mere stranger(y).

I think otherwise; the old bailiff should make his return first, and the new bailiff that he has received it as indorsed; or if the old bailiff returns the writ, he should make the return only, if it be not delivered over to the new bailiff.

The practice, I believe, now is (unless the defendant be in actual custody) that the old sheriff keeps by him all executed process, and bail-bonds taken thereon (except *London* and *Middlesex*;) or the rule on him to return the writ, or bring in the body, would be nugatory. If it be not so, the party must proceed by *distringas* to compel, &c.

But if not executed before the old sheriff be removed, afterwards sheriff executes it, to be returned by sheriff who executed it.

But if a writ directed to the sheriff is *not* executed by him, *and nothing done in the execution thereof, before the sheriff is removed* and another elected, and after the writ is executed, it shall be returned generally in the name of that sheriff who executed it, without making any mention of his predecessor(z).

Same law as to a bailiff.

The same law is likewise in the case of a bailiff of a franchise.

If sheriff levies and dies, his executors liable to an action.

If a sheriff levies goods, and dies before satisfying the plaintiff, an action of debt well lies against his executors(a). But where the sheriff is chargeable in his lifetime for a personal tort, or misfeasance, there his person is only chargeable, and *actio moritur cum personâ*.

A *fi. fa.* executed same day writ of discharge came to the sheriff, held that the old sheriff was chargeable.

A *fi. fa.* was delivered to the under-sheriff, who executed it the same day that the writ of discharge came to the high sheriff; but because it could not be proved that the under-sheriff had notice of the writ of discharge before the execution executed, it was held by the court that the execution was well executed, and that the old sheriff was chargeable for it(b).

The return of one sheriff not conclude the other.

The return of the one sheriff shall not conclude the other(c).

(y) Roll. Abr. 457. Cro. El. 512.

(z) Roll. Abr. 458.

(a) Cro. Car. 539, 540.

(b) Boucher v. Wiseman, Cro. El. 410.

(c) Br. Rct. Writs, pl. 5. 3 H. 6. 56.

A writ of discharge was delivered to the sheriff, his under-sheriff, not knowing it, makes execution in the county, and adjudged no execution, and yet sheriff no trespasser (*d*). And *Walmsley* cited a judgment, that execution by bailiff after *supersedeas* delivered to the sheriff is void.

Where the old sheriff arrests a man, and afterwards returns a *languidus in prisonâ*, and afterwards, in *exitu ab officio*, delivers him to the sheriff charged with the arrest, and then the new sheriff suffers him to escape; here the new sheriff is only chargeable with the escape, and although the old sheriff returned a *languidus in prisonâ*, yet that is not material to the plaintiff, he remaining always in prison, and that return was only to excuse the bringing of the prisoner at the day (*e*).

Where new sheriff chargeable on arrest by the old sheriff.

The 20 *Geo.* 2. requiring all *unexecuted* process to be turned over to the new sheriff, of course those that remain *executed* in the hands of the old sheriff must be *returned by him*; he therefore now may be called on by rule of court to return the same, provided it be within six months after the expiration of his office; the day in which he goes out of office is to be reckoned one (*f*).

c. 37.
Late sheriff may now be called on to return writ by rule of court;

And by the rules of the courts of King's Bench and Common Pleas, if he returns *cepi corpus*, he may now be called on to bring in the body without the process of *distringas*.

and also to bring in the body.

In case the old sheriff leave with the new one a writ *returned, executed by him*, then it is usual for the *new sheriff* to make his return underneath, thus:

“ This writ, as above indorsed, was delivered to me by the above-named late sheriff at the time of his going out of office. The answer of C. D. esq. sheriff.” (*g*).

The sheriff to whom a writ is directed, and by whom it is executed, ought to make his return to it, and hand it over to the new sheriff; and if the old sheriff after arresting a man suffer him to escape before the return-day, he alone is answerable (*h*).

When late sheriff answerable.

In all cases (except on process or execution against the body) where the sheriff who executes the writ is out of

In all cases (except, &c.) the remedy

(*d*) Dyer, 315. Mar. pl. 36.
cites E. 44 El. C. B.

(*g*) Dalt. 516. 2 Roll. 457.
Bulstr. 70.

(*e*) Cro. Jac. 380. Dalt. 516.

(*h*) 4 East, 604.

(*f*) Doug. 463.

against the old
sheriff is by
distringas.

office, after return of his writ, a writ of *distringas* is to be directed to the new sheriff, to distrain the old sheriff, and the new sheriff shall make return of such *distringas*. And the plaintiff may also pursue his remedy by action for a false return, at the same time (i).

Of his Raising the Posse Comitatus.

By common
law the sheriff
may raise the
posse comitatus.

BY the common law the sheriff may raise the *posse comitatus*, or power of the county, that is, such a number of men as are necessary (*after resistance*) for his assistance in the *execution* of the king's writs (k). And every man is bound by the common law *to assist, not only the sheriff, but also his bailiff* that hath the sheriff's warrant in that behalf, who has the same authority which his master has; for the sheriff cannot do all himself; and if they refuse, *being required*, they shall be fined and imprisoned (l).

Who are to
attend.

All knights, gentlemen, yeomen, labourers, servants, apprentices, and villeins, and likewise wards and other young men that be above the age of fifteen years, shall be compelled to attend. But not women, ecclesiastical persons, and such as be decrepit, or do labour of any continual infirmity (m).

2 H. 5.

And all persons under the degree of a peer are bound to attend *upon warning of the sheriff* (n).

13 Ed. 1.

Anciently, great men had castles, fortresses and liberties, whereby they resisted the sheriff in executing the king's writs, which created great inconvenience; the statute of *Westm.* 2, hindered the sheriff from returning rescues to the king's writ of *execution*; the words are,

c. 39.

“Also false answers, that they could not execute the king's precept, for the resistance of some great men, redound much to the dishonour of the king. And as soon as the bailiffs testify that they found such *resistance*, forthwith all things set apart (*taking the power of the shire*) the sheriff shall go in person to do execution; and if he find his under bailiffs false, he shall punish them by imprisonment, and if he find them true, he shall punish the resisters by imprisonment, from whence they shall not be delivered without the king's special command.

(i) An. 2 Ch. 392.

(k) 3 Inst. 161.

(l) 2 Inst. 193.

(m) Lamb. Eir. l. 3. c. 1. 19 Vin. Abr. 431.

(n) 3 Co. 142. 1 Inst. 193.

“ And if the sheriff find resistance, he shall certify to the court the names of the resisters, aiders, consenters, commanders and favourers.”

The words of this statute have been construed to extend to *executions only*, and not to writs on *mesne process*; and that the sheriff was not obliged to raise the *posse comitatus* where the party was bailable; for that it cannot be presumed that in such cases the king's writ will be disobeyed (*o*). And it was adjudged and agreed by the court, that though the sheriff was not obliged, that yet he may take his *posse* to serve *mesne process* in case of resistance (*p*).

But he must take it *after resistance* and not before; for *sequi debet potentia justitiam, non præcedere* (*q*).

By W. 1. if a distress be impounded in a castle or fortress, and detained, the sheriff or bailiff, taking with him the power of the shire, &c. may cause the said castle or fortress to be beaten down.

The sheriffs are not confined to any number of persons, but it is referred to the discretion of the sheriff, &c. what number they will have to attend upon them, and how and in what manner they shall be armed, weaponed, or otherwise furnished (*r*).

The sheriff's bailiff, to execute a replevy, took with him three hundred men armed, and held lawful, for the sheriff's officer hath power as well as the sheriff (*s*).

It seems when the power of the county is to be raised or taken, that the bailiff must have warrant from the sheriff to do it, and that he must be a known bailiff or officer, that must do it.

If the sheriff, &c. shall take *posse comitatus* with them, without any sufficient cause, yet such as therein shall be aiding to the sheriff or his said officers or servants may well justify such their doing by the commandment of the sheriff or his said officers, &c.

The sheriff is bound to do and make executions at his peril, for if he take the defendant on a *ca. sa.* and he is rescued from him before he can bring him to prison, though he returns the rescue, yet this shall not excuse

The construction of this act extends to executions only, and not to mesne process.

It was adjudged he may take *posse comitatus*.

Must take after resistance.

c. 17.
If distress be impounded in a castle, sheriff may raise *posse comitatus*.

Sheriff not confined to numbers.

Sheriff's officer took 300, and held lawful.
3 H. 7.

But bailiff must have warrant from sheriff to do it.

If he takes *posse* without cause, yet all discharged, and may justify.
5 H. 7. 4, 5.

Bound to execute executions, therefore to raise *posse*, &c.

(*o*) 1 Roll. Abr. 807. 1 Roll. Rep. 388. 410. Cro. Jac. 419.

(*p*) Cro. El. 868. 2 Lev. 141. 3 Lev. 46. Noy, 40. Moor, 852.

(*q*) 2 Inst. 454.

(*r*) Dalt. 355.

(*s*) 1 Dalton, 355. 5 Co. 72.

c. 39.

him, for when judgment is passed, and he and his bail do not surrender him, nor pay the condemnation money, the sheriff ought to take the *posse comitatus*; and consequently cannot be a good return, that he took the body, but that it was rescued; and the party may have an action of escape against the sheriff on this return; and this is provided by the statute W. 2, which was made to prevent sheriffs from returning rescues to the king's writs. But to mesne process he may return rescue (t).

The reason.

The reason why such return is not good is, that anciently every man, being in *decenna*, had bail, and now is presumed to have bail ready to be answerable for his forthcoming, and therefore the sheriff is not obliged in duty to take the *posse comitatus* to assist him; but when judgment is passed, and his bail do not surrender him, nor pay the condemnation money, then a *ca. sa.* issues, to which there can be no bail; and there it is presumed that he will not be forthcoming, because neither he nor his bail have satisfied the judgment; and therefore the sheriff then ought to take the *posse comitatus*, and consequently cannot be a good return that he took the body, but that it was rescued; and the party may have an action of escape against the sheriff on this return, or a new *capias* for the return of an ineffectual execution; but if the sheriff had permitted him to go at large, he could have had no new execution, for an effectual execution is returned, and so there is a pledge for satisfaction in the custody of the sheriff, for which he is only answerable (u).

If rescue be
returned after
goods taken.

If the sheriff take goods on an execution, he cannot return rescued, because he ought to have taken the *posse comitatus*; and if he returns a rescue, he charges himself with the seizure (x): it having been held, that a return of rescue was no excuse to the sheriff; for he might have taken the *posse comitatus*.

Sheriff may
raise power of
the county.

The sheriff, if need be, may raise the power of the county to assist him in the execution of a precept of restitution; and therefore if he make a return thereto that he could not make a restitution, by reason of resistance, he shall be amerced (y).

(t) Cro. Jac. 419. 1 Roll. Rep. 388. 440. 3 Bulstr. 198. 3 Lev. 46. (x) Mildmay v. Smith, 2 Saund. 343. 2 Roll. R. 57.
(u) 1 Ro. 904. Cro. Car. 240. (y) Lamb. 157.
255.

But though it be the duty of a sheriff, or a minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance, yet it is said not to be lawful further to raise a force for the execution of a civil process, unless they find a resistance; and it is certain they are highly punishable for using any *needless* outrage or violence therein (z).

It is said, a sheriff who cannot do execution by a *posse comitatus* ought to acquaint the deputy lieutenants of the county; and if they assist not, he may acquaint the king and council: and yet the sheriff shall be amerced, if he return that he cannot do execution (a).

It is holden for a maxim of law, that it is not lawful for any man to disturb the ministers of the king in the due execution of the king's writs, or process of law (b).

Not to raise *posse comitatus* on civil process, unless they find resistance.

To acquaint the deputy lieutenant, if he cannot do execution by a *posse comitatus*.

Not lawful to disturb the execution of the king's writ.

Two Sheriffs considered.

IN *London* and *Middlesex*, it has been already observed, both sheriffs make but one in both counties: and therefore it seems to be a good cause of challenge if the writ appears to be returned by one sheriff only; and if one of them dies, the office is at an end till another is chosen. The first beginning of this custom seems to be upon the foundation of the charter of King *John*, who granted the sheriffwick of *London* and *Middlesex* to the mayor and citizens of *London*, at the farm of 300*l. per annum*. So that being a grant in fee of the sheriffwick to them as a corporation, they had a right to name one or more officers, in order to execute the same; and they thought it proper to name two officers indifferently to execute both offices, and both of them to execute as one sheriff, though the writ in *Middlesex* is directed to them as one, viz. *Vic' Com' Middx. præcipimus tibi*, in that of *London*, *Vic' Com' London' præcipimus vobis*: and the reason of this difference seems to be, that before this grant of the sheriffwick to the corporation, the corporation nominated to the crown, and the crown appointed the sheriffs for *London*, and the *London* sheriffs were responsible to the king for the *London* profits of the sheriffwick, and

In *London* and *Middlesex* both sheriffs make but one.

If one dies office at an end.

The beginning of the custom is founded on the charter of K. *John*.

Reason why called in *Middlesex* one sheriff, and *London* two.

(z) 3 Inst. 161. 2 Inst. 193. Hob. 62. 264.

(a) *Bush v. Chamberlain*, 1 Keb. 99. pl. 91.

(b) 2 Inst. 194.

that was the reason why two were appointed, that both might be responsible; and this nomination was, that the citizens might exhibit to the king responsible persons; and that seems to be the reason that in many of the corporations that are cities and counties there are two sheriffs; but when, by the charter of King *John*, the sheriffwick of *London* and *Middlesex* was granted to the citizens as a perpetual fee farm, then they entered their sheriffs, which before were nominated for *London* only, and the election of the two was for both sheriffwicks, but the direction of the king's writs were as before, viz. in *London* to the *two sheriffs*, and in *Middlesex* as if there was only *one* (c).

Information against three, one of them one of the sheriffs of C. and *ven. fac.* awarded to the other sheriff, it was suggested on the roll one was a party; held that where there are two, and one a party, the other shall supply the defect.

Coroner not the person to execute but where the other sheriff

is wanting. An information was brought against three, whereof one of them was one of the sheriffs of the city of *Chester*, and the *ven. fac.* was awarded to the other sheriff. It was suggested on the roll that one of the sheriffs was party. Question was, whether it was good: And it was adjudged to be well awarded. And as to an objection which had been made, that both are but one officer in law, it is plainly otherwise; for where there are *two sheriffs*, and *one* is challenged, the other shall supply that defect, and not the coroner; for he is not the person to execute the process of the court, but only where the proper officer is wanting, which cannot be where there is one sheriff (d); and *Salkeld* says (e), for the other may execute the writ, but he does it in the name of both (f).

Two sheriffs make but one officer, if one dies, office at an end.

One sheriff makes his return without the other, no return.

Error to reverse an outlawry.

Where there are two sheriffs, they regularly make but one officer, and therefore if one of them dies, the office is at an end until another is chosen, and the courts of *Westminster* can award no process to the other (g).

If one sheriff of *London* make his return without his fellow, this being as no return at all, is not aided by the statute which aids insufficient returns (h).

In a writ of error to reverse an outlawry, among other errors, it was assigned that the direction of the exigent to the sheriffs of the city of *Lincoln* was *quod capias corpus*

(c) Gilb. H. C. B. 136, 137. 3 Co. 72. 1 Show. 162, 163, 289.

2 Show. 262, 286. Lev. 284. Hob. 70. Priv. Lond. 5, 6, 7. 272, 273.

(d) 4 Mod. 65, 66. K. & Q. v. Warrington, 21 H. 6. 8. pl. 17.

(e) 1 Salk. 152.

(f) Show. 327. Acc. Comb. 191. 12 Mod. 22. S. C. Carth. 214, cites it as so held in the cases of *Bethel v. Harvey*, and of *Rich v. Player*.

(g) 4 Mod. 65. 1 Show. 289. Mod. Cas. L. & Eq. 304.

(h) Hob. 70. Lit. Rep. 129.

ejus ita quod habeas corpus ejus, &c. where, they being two sheriffs, the writ ought to have been *capiatis et habeatis*; *sed non allocatur*; for they both be but one officer to the court; and although in the end of the writ it is *ita quod habeatis ibi hoc breve*, yet there is no repugnancy, for it is good both ways (*i*).

If there are two sheriffs of the same place, and an action is brought against them both for an escape, if one of them dies, yet the writ shall not abate; for it being in the nature of a trespass, and merely personal, the party can only have remedy against the survivor (*k*).

A prisoner in *Wood-street Compter*, on a plaint against him, escaped; whereupon the plaintiff brought his action against both sheriffs of *London*; and on demurrer to the declaration the plaintiff had judgment; and it was resolved, that though the plaint was levied before one defendant only in his court, and prisoner escaped out of his compter, yet that both the sheriffs had the custody of the prisoners in both compters, and by consequence the action was well maintainable against both (*l*).

If two sheriffs, and action against both for an escape, if one dies writ shall not abate.

A prisoner in Wood-street on a plaint, escaped, action brought against both sheriffs, and held good, though they have different compters, and plaint levied before one only.

EXECUTION.

By writ of Capias ad Satisfaciendum.

THE first species of execution is by writ of *Capias ad satisfaciendum*, which is a writ of the highest nature, inasmuch as it deprives a man of his liberty till he makes the satisfaction awarded; and therefore when a man is once taken in execution by the sheriff, on this writ, no other process can be sued against his lands or goods.

Capias ad satisfaciendum against the body.

By this writ the sheriff is directed to take the body of the defendant, and have him at *Westminster* on a day therein named, to make the plaintiff a satisfaction for his demands. And if he does not then make satisfaction, he must remain in custody till he does.

What sheriff to do thereon.

When the defendant is once in custody upon this process, he is to be kept in *arctâ et salvâ custodiâ*: and if he be afterwards seen at large it is an escape; and the plaintiff may have an action thereupon for his whole debt. For though upon arrests, and what is called *mesne process*, be-

If he takes the defendant on this writ, is to keep him in safe custody.

(*i*) *Gargrove v. Markham*, Cro. Jac. 576.

(*k*) *Benion v. Sh. of York*, Cro. El. 625.

(*l*) Car. 145, 1 Show. 162.

c. 27.

Not to indulge
him, and why.

If a *ca. sa.*
against two or
more.

He cannot re-
turn a rescue.

May not break
doors, &c.

Except where
the king a party.

But he ought
first to acquaint,
&c.

House no pro-
tection for
another.

Sheriff cannot
receive the
money on a
ca. sa.

ing such as intervenes between the commencement and end of a suit, the sheriff, till the 8 & 9 *W. 3.*, might have indulged the defendant as he pleased, so as he produced him in court to answer the plaintiff at the return of the writ: yet upon a taking *in execution*, he could never give any indulgence; for in that case confinement is the whole of the debtor's punishment, and of the satisfaction made to the creditor.

If a *ca. sa.* be against two or more, the sheriff may take the bodies of *all* in execution (*m*).

A rescue of a prisoner in execution, either going to gaol or in gaol, or a breach of prison, will not excuse the sheriff from being guilty of and answering for the escape; for he ought to have sufficient force to keep him, seeing he may command the power of the county (*n*).

Where, in an action for a false return to a *ca. sa.*, it was alleged that the officer was in sight of the party, held that no averment of notice of his being within the bailiwick was necessary (*o*).

On this writ, the sheriff may not break open any man's house to arrest him; but in all cases, when the door is open, he may enter to make execution of the body. But yet, in favour of executions, which are the life of the law, and especially in cases of great necessity, or where the safety of the king and commonwealth are concerned, the general case is excepted when the writ is at the suit of the king; then the sheriff, or his officer, after request to have the door opened, and refusal, may break open the house to take the body (*p*); but he ought first to signify the cause of his coming, and request the owners to open the door (*q*).

But a man's house is no protection for *another*, therefore the sheriff may break open to take him (*r*).

It is said that the sheriff cannot receive the money on a *ca. sa.* as he can on a *fi. fa.*; for on the command of the writ he is to take the body, and bring it into court, that the plaintiff may be satisfied, so that the money is to be paid into court, in order to discharge the body of the de-

(*m*) 5 Rep. 86. Godfrey's case,
11 Rep.

(*n*) Cro. Jac. 419.

(*o*) Dean of Hereford v. Macna-
mara, 5 D. & Ry. 95.

(*p*) 5 Co. 91. 2 Show. 87. pl. 78.

(*q*) Cro. El. 908, 909. 714. pl.

17. Leon. 41. pl. 111.

(*r*) Fost. Cr. L. 319.

fendant, and not to the sheriff below (s). If he receives the money from a party taken in execution, which is illegal, he may be called upon to repay it, with costs of the levy (t).

But payment, or a tender of the debt and costs, to the plaintiff's attorney, on record, is a good payment to the plaintiff himself (u). The sheriff cannot receive it; and if he does, the payment is no discharge as against the plaintiff; the creditor is therefore bound to accept the debt and costs when tendered, and give an authority for the party's discharge, or the refusal will be *prima facie* evidence of malice in an action (x).

In debt on a judgment, the defendant pleaded that he was taken in execution by *ca. sa.* on that judgment, and had paid the money to the sheriff, and it was held to be no plea; because though he does pay it to the sheriff, yet the sheriff may be insolvent, or may die, and leave no assets, and then the party will be never the better; and so it was held in *Baker's* case, who pleaded payment to the marshal, being in execution, and held to be no plea (y). The sheriff hath no power to receive money of the defendant upon a *capias*, for his business is only to execute his writ. And if in such case the defendant pays the sheriff, and he afterwards becomes insolvent, and does not pay the plaintiff, such payment shall not excuse the defendant.

Plea of payment to the sheriff not good.

At common law, no officer, whose office related to the administration of justice, could take any reward for doing his duty but what he was to receive from the king (z); and the fundamental maxim of the common law is confirmed by 3 *Ed. 6*, whereby it is ordained, that no sheriff shall take any reward to do his office, but shall be paid of that which he takes of the king, and that he who so doth shall yield thrice as much, and shall be punished at the king's pleasure.

At common law no reward to be paid to sheriff for doing his duty.
c. 26.
And by stat. no sheriff to take reward to do his office but of the king.

So much hath this law been thought to conduce to the honour of the king and welfare of the subject, that all prescriptions whatsoever which have been contrary to it have been holden void (a).

(s) Latch. 177.

(y) Freem. 842. Lutw. 578. 12

(t) Mottan v. Hort, 4 Bing 147. Mod. 230. 385.

(u) 2 Show. 139, pl. 116. 2 Lev. 203. (z) 10 Mod. 139.

(x) Crozer v. Pilling, 4 B & Cr. (a) 4 Bac. Abr. 463.

26. 11 East, 408.

Sheriffs backward in executing their writs before an act was made to state the fees.

29 El. c. 4.

Crown not bound.

But if a *ca. sa.* issue on a judgment or a bail-bond taken on an Exchequer process, and the defendant is taken, sheriff entitled to his poundage.

c. 4.

c. 15. s. 17.

Fees often taken on a *ca. sa.* for the whole penalty acknowledged.

To prevent which, sheriffs are not to take more poundage

The common law giving no fees to sheriffs, made them backward in executing writs, by reason of the great danger both in taking desperate men, by reason of resistance, and also in detaining them, for fear of escapes; so that they would have great rewards, or otherwise would do nothing; whereupon the parliament thought fit to fix their fees (*b*).

The crown is not bound by the statute not being named (*c*). However, an action brought in the Exchequer by the sheriffs of *London*, upon a bail-bond taken by them in their *own* names, for the appearance of a defendant taken upon an Exchequer process, on the prosecution of the king's attorney-general, on behalf of the crown, for custom-house penalties and forfeitures; and a *testatum ca. sa.* to the sheriff of *Herts* against the bail, cannot be considered as the suit of the crown, though averred to be for the benefit, and on behalf, and at the expense of the crown, nor shall the sheriff who executed it be precluded from his poundage (*d*). The 29 *El.* does not extend to executions on statutes, recognizances, &c. because the judgment is not *in invitum* (*e*). And such fees being only allowed by the statute for his care, pains and charges in executing the process by *levying* the money, he has been held not entitled thereto in respect of monies found in the hands of crown debtors, nor on sums paid by sureties, nor on debts collected by him under an arrangement not connected with his character and power as sheriff, nor on sums paid by a receiver appointed by the court (*f*).

By 3 *Geo. 1*, reciting,

“That whereas it often happens that small sums only are remaining due upon judgment, statutes and recognizances, given, acknowledged and entered into for great sums and penalties, and nevertheless in these cases, upon executing of writs of *ca. sa.*, the sheriff demands and takes for his fees poundage for the whole money for which said judgments, statutes or recognizances are entered or acknowledged: For remedy of which grievance and inconvenience, be it enacted, that from and after the last day of *Michaelmas* term 1717, poundage shall in no case be demanded or taken upon executing any writ of *ca. sa.*, or upon

(*b*) Latch. 18. Cro. El. 654, pl. 15.

(*c*) 4 Burr. 1984.

(*d*) Lake v. Sh. of Herts, 4 Burr. 1981.

(*e*) Salk, 332.

(*f*) Rex v. Villers, 8 Pri. 587.

charging any person in execution by virtue of such writ, for any greater sum than the real debt *bonâ fide* due, and claimed by the plaintiff amounteth unto; which sum the plaintiff shall be and is hereby obliged to mark and specify on the back of such writ, before the same be delivered to the sheriff to be executed."

than for the sum indorsed on the writ.

"And if any sheriff, &c. shall take greater fees, he is guilty of extortion; and being convicted, shall forfeit to the party grieved treble damages, and double the sum extorted, to be decreed by the court out of which such writ issued, in a summary way. And every person so offending shall forfeit 200*l.*, to be recovered by bill, plaint or information."

Guilty of extortion; and forfeit treble damages to party grieved.

As also 200*l.*

This statute extends to all judgments in *Westminster*; and whether the sheriff executes them in a county or a franchise, he shall have his fees. And so it is of a bailiff of a liberty, when he executes any execution on a judgment given in the courts at *Westminster*, within his liberty. But on process on a judgment given in a court of *corporation*, or *liberty*, it is otherwise (*g*).

What statute extends to.

For executing a *ca. sa.* the sheriff is entitled to 12*d.* in the pound, when the sum exceedeth *not* 100*l.*; and 6*d.* for every 20*s.* above that sum that he shall take the body in execution for, which is called poundage.

What sum for poundage.
29 El. c. 4.

But in ——— term, 1785, a special case was made by Lord *Mansfield* from the sittings at *Guildhall*, and the question was, whether a plaintiff should pay to the sheriff, under the above act, poundage for his debt, the prisoner *being in gaol*, and *not having made satisfaction*; it was held that the sheriff was entitled to his poundage whether the plaintiff received the debt or not, and judgment was given for the plaintiff.

A special case made on poundage, party being in gaol.

The sheriff had the defendant in execution on a *ca. sa.*, plaintiff delivered him on a *hab. corp.* to remove him to the King's Bench prison. He, upon this, insisted to be paid his poundage *before* he parted with the body. *Cur.* said, they could not be making bargains with people to obey their process, which they could enforce an obedience to, and left the sheriff to his action for his fees, which was his legal remedy (*h*).

Sheriff had defendant in execution, *hab. corp.* was brought to remove him; sheriff insisted on his poundage, but court said he might bring his action.

An under-sheriff refused to execute a *ca. sa.* till he had his fees; *Cur.* said, plaintiff might bring an action against him for not doing his duty, or might pay him his fees,

Under-sheriff refused to execute a *ca. sa.* before payment

(*g*) Salk. 331.

(*h*) Str. 1262.

of the poundage, but was obliged.

Sheriff cannot apply the money levied on a *ca. sa.* to a *fi. fa.* he has against the plaintiff as executor, at the suit of the defendant in the *ca. sa.*

and then indict for extortion (*i*); and if he delay paying over residue under a claim of poundage, which is eventually disallowed, he will be charged with interest (*k*).

Bird was arrested at the suit of *Staple* on a *ca. sa.* *Bird* pays the money to the sheriff; at the return, the sheriff returned that he took the defendant, who paid into his hands 30 *l.* 6 *s.* 6 *d.*, the sum mentioned in the *ca. sa.*, and after, and before the return, 11 *May*, a *fi. fa.* against the goods of *Staple*, the plaintiff in the *ca. sa.* ats. *Bird*, the defendant in the *ca. sa.*, for 29 *l.* 10 *s.*, was delivered to the sheriff, and that he levied the same out of the money received under the *ca. sa.* Upon this return and affidavit of facts, application was made to the court, and rule obtained to show cause why he should not pay plaintiff's attorney the said 30 *l.* 6 *s.* 6 *d.*, deducting poundage; which rule was made absolute upon hearing counsel on both sides (*l*).

N. B. Had this *fi. fa.* been against *Bird* himself, I think the court would have applied the money, deducting poundage and the attorney's costs, towards a satisfaction of the *fi. fa.* (*m*), as to application of two judgments.

May take defendant to prison on the *ca. sa.* within 24 hours. c. 28. s. 1.

A sheriff's officer is not liable to the penalties of 32 *Geo.* 2. for carrying a person taken in execution to prison within twenty-four hours; that clause only relates to persons arrested on *mesne process* (*n*).

Debt lies for fees.

An action of debt lies by the sheriff for his fees for executing the writ (*o*).

By Fieri Facias.

Fieri facias.

THE next species of execution is against the goods and chattels of the defendant, and is called a writ of *fieri facias* from the words in it; where the sheriff is commanded, *quod fieri faciat de bonis*, that he cause to be made of the goods and chattels of the defendant the sum or debt recovered, and have it in court on the return day. The writ, in point of form, invariably pursues the judgment; and therefore it has been holden that a *special* execution is not warranted by a *general* judgment (*p*).

(*i*) Noy, 75. Salk. 331.

(*k*) R. v. Villers, 11 Pri. 575.

(*l*) Staple v. Bird, Barnes, 214.

(*m*) Vide 3 Wils. 396.

(*n*) Evans v. Atkins, 4 T. R. 555.

(*o*) Jayson v. Rash, Salk. 209.

331.

(*p*) 1 T. R. 80.

This writ, at the common law, bound the defendant's goods from the *teste* of the writ, so that any sale after that was void, because the goods from the time of the *teste* were attendant to answer the execution; for the execution at common law being only on the goods, if they had not allowed the goods to be bound, as if the party had transferred them, they thought every execution might be avoided by sale; and it was presumed that the sheriff should execute such writs immediately, and that there would be notice in the neighbourhood, that they might not be deceived; but the goods were not bound by the judgment, because the judgment was in force for a whole year; and it would be hard that none against whom judgment was pronounced should buy or sell within that time: but men abused the notion of the retrospect of the goods being bound by the *teste* of the writ, to make sales uncertain; for they took out writs one under the other, without delivering them to the sheriff, by which they bound the goods of their debtors, and consequently made their sales and commerce uncertain; to prevent which, the statute of frauds and perjuries binds the goods only from the delivery of the writs to the sheriff, enacting,

“That no writ of execution shall bind the property of
 “the goods, but from the time of its *delivery* to the sheriff,
 “under-sheriff or coroners; who, upon receipt thereof
 “(without fee) shall indorse on the back thereof the day
 “of the month and year when they received it.”

Which was no more than restoring the old law, which supposed the writ to be delivered to the sheriff immediately from the *teste* (*q*).

This must be intended as to strangers, who might have a title to the goods between the *teste* of the writ and delivery thereof to the sheriff; but as to the party himself, his executors and administrators, the goods, since the statute, as before, are bound from the *teste* (*r*).

If two writs of *fi. fa.* bear *teste* the same day, the sheriff, at common law, and now since the statute, is bound to execute that which was *first* delivered to him (*s*); therefore the time ought to be marked when the sheriff receives those writs in office. If *fi. fa.* be tested before,

At common law, this writ bound the goods from the *teste*.

Abuse of this notion.

To prevent which, statute of frauds was made; and enacts, That no writ of execution shall bind the property.
 29 Car. 2. c. 3,
 made perpetual by 1 Jac. c. 17.
 s. 5.

This must be intended as to strangers, but as to the party, the goods are bound from the *teste*.

If two writs of *fi. fa.* bear *teste* the same day, bound to execute the first delivered.

(*q*) 8 Co. 171. Cro. Jac. 451. Cro. El. 174. Sid. 271.

(*r*) 2 Vent. 218. Comb. 33. 2 Show. 485. 6 Mod. 225.

(*s*) Salk. 320. Carth. 419.

but delivered to the sheriff and executed after defendant's death, the execution is irregular (*t*).

If two writs be delivered to the sheriff on *different* days, and the sheriff execute the last first, by making sale of the goods, the sale will stand good, and the person who delivered the first writ to the sheriff shall have his remedy by an action against him (*u*).

Though in general the sheriff must first levy on the writ which he *first* receives, yet if the plaintiff in that writ directs it not to be executed *before a distant day*, and in the mean time another execution comes, the sheriff is not to keep the first hanging over the head of other creditors, but is to levy under the last execution, as if no other had been delivered to him (*x*). So, if the debtor be permitted by the plaintiff in the first execution to continue in possession (*y*).

If two writs be delivered on different days, and no sale made, the first to have a priority, though the seizure was made under the second first.

Where two writs of *fi. fa.* against the same defendant are delivered to the sheriff on *different* days, and no sale is actually made of the defendant's goods, the *first* execution must have the priority, even though the seizure was first made under the subsequent execution; and if the person claiming under the second execution pay the sheriff the amount of the debt under the first execution for his security, the court will not compel the sheriff to refund that money on motion. The principle of law is, that the person whose writ is *first* delivered to the sheriff is entitled to a *priority*, and that the goods of the party are bound by the *delivery of the writ* (*z*).

So where an act of bankruptcy and *fi. fa.* executed concur on the same day, the priority in time determines the validity of the latter (*a*). An execution taken out after a bankrupt's certificate is signed by creditors, but before allowance by Chancellor, is valid (*b*).

The plaintiff delivered a *fi. fa.* to the sheriff, under which his officer levied, and a bill of sale was made; then the sheriff discovered a *former* execution in the office, and returned *nulla bona*; on this case the

(*t*) 1 B. & P. 571. 1 T. R. 729. (*y*) Lovick v. Crowder, 8 B. & Cr. 132.
 (*u*) Carth. 420. Smallecomb v. Buckingham, 4 East, 523; and 1 T. R. 729. (*z*) Hutchinson v. Johnson, 1 T. R. 731.
 (*a*) Kempland v. Macauley, Peake's N. P. 65; and 1 East, 523. 1 (*a*) Sadler v. Leigh, 4 Camp. 197.
 Smith 170. (*b*) 1 T. R. 361.

defendant obtained a verdict; and on motion for a new trial, court ordered the verdict to be entered for the plaintiff, for the sheriff, having once sold under the plaintiff's execution, was answerable to him for the debt (*c*).

And the mere existence of a prior writ does not justify his return of *nulla bona*, if the goods in his possession were not applied to satisfy it, and having control over them, he was bound to execute the latter; and where the jury found that a previous bill of sale was fraudulent, held that he was liable to the second execution creditor (*d*).

If a *fi. fa.* is fraudulently or insufficiently executed, and no person left in possession, and another plaintiff gets his execution executed afterwards, the second shall stand good; and the sheriff may return *nulla bona* on the first (*e*). It seems it was left to the jury whether the execution that first came into the house was intended to be executed, or was really executed, and they thought it was not (*f*).

Fraudulent execution, and another comes, second good.

By virtue of this writ, the sheriff, on the seizure of the goods, hath such a property in them that he can maintain trespass or trover; for he has the goods to sell, that he may have the money in court; and therefore, when he once seizes them, he has the property in them for that purpose (*g*). And if the defendant dies after the writ *delivered* to the sheriff, he may execute the same on the goods in the hands of the executor or administrator of the deceased (*h*), because the sheriff was entitled to seize them from the time of the writ. But *quære* (*i*) where he has never had them in his hands.

Sheriff hath such a property as he may, if taken out of his hands, maintain trespass, &c.

If he dies.

If the sheriff seizes goods in his hands to the value of the debt, and pays part, and is discharged from the office without having sold the rest, or having returned his writ; notwithstanding such discharge, and without any *vend. exp.*, he may sell the goods remaining in his hands, and such sale and execution shall be good (*k*).

If he seizes goods to the value of the debt, and pays part, and is discharged, he may sell without a *vend. exp.*

(*c*) Rybot v. Peckham, cited in 1 T. R. 731.

(*d*) Towne v. Crowder, 2 Ca. & P. 355. 12 Mod. 130, 241.

(*e*) Bradley v. Windham, 1 Wils. 44.

(*f*) 1 Salk. 320. 5 Mod. 375. 1 L. Raym. 251.

(*g*) Sid. 438. pl. 3. Vent. 52, 53. 2 Vent. 218. Mod. 30. pl. 75. 2

Saund. 47. Lev. 282. Salk. 222.

(*h*) 3 Wils. 399. Comb. 33. 2 Ld. Raym. 808, 850. 1073. 12 Mod. 130. 241.

(*i*) Bilke v. Havelock, 3 Camp. 374.

(*k*) Roll. Abr. 893. Salk. 323.

This writ indemnifies the sheriff, and therefore he may break open a chest, &c.

but not the dwelling-house.

But if he once gets into the house, there begins the execution.

If sheriff be a trespasser, yet if the writ is served and money levied, plaintiff shall have the benefit of it.

Protection of house, not for a stranger's goods.

Protection of a man in his own house is agreeable to the common law.

Not to break open outer doors.

May sell an estate for years.

By this writ the sheriff is commanded to levy the debt of the goods and chattels of the defendant, and he is therefore indemnified as far as he acts necessarily in order to the taking of the goods; and therefore if he breaks open a chest, in which goods are locked up, or a barn, not adjoining to a dwelling-house, which is made for the conservation of goods only, he is indemnified by the writ; but he is not by the writ authorized to break the dwelling-house, which is built for the protection of the man and his family (*l*). If he gets into the house, the doors being open, there begins the execution, for the rest of the house is only for the protection of the goods; and therefore he may enter and finish the execution of his writ: But, though the sheriff be a trespasser in the execution of the process, yet when the writ is served, and the money levied, the plaintiff shall have the benefit of it, and the party is left to his remedy against the sheriff (*m*). But the protection of a man's house extends only to himself and family; for if a stranger, to elude execution, receives the defendant's goods into his house, then the sheriff's authority shall reach them; because a design to elude the law shall not be protected by the law: the sheriff might seize him in the stranger's house, because the defendant's leaving his own house has waved the benefit of the law (*n*). That protection of a man in his own house was very agreeable to the ancient law; because, in personal contracts, they did only subject their chattels, and not their persons nor freeholds; and though afterwards, by subsequent laws, the freehold and person were made liable to execution, yet they have not taken away the privilege a man had by common law to defend his own house, which still continues, unless where the execution is by *habere facias seisinam*, or *possessionem* (*o*).

The sheriff may not break open any *outer* doors to execute this writ (*p*), but must enter peaceably, and may then break open any inner door belonging to the defendant to take the goods (*q*). But it seems that he should first demand admittance (*r*). And he may sell the goods and chattels (even an estate for years, which is a chattel

(*l*) Sid. 189. Keb. 698. 2 Show. 87. Palm. 54.

(*m*) Brownl. 50. 5 Co. 91. 3 Inst. 162. Mod. 668. Yelv. 28. Cro. El. 908. Dalt. 350.

(*n*) 5 Co. 93. Sid. 186.

(*o*) Gilb. Ex. 18.

(*p*) 5 Rep. 92.

(*q*) Palmer, 54.

(*r*) 3 B. & P. 229; *sed vid.* 4 Taunt. 619.

real) of the defendant, till he has raised enough to satisfy the judgment and costs, first paying the landlord not exceeding *one year's rent* (s).

8 Ann. c. 14.

By this writ the sheriff hath authority to seize every thing that is a chattel, *viz.* leases for years, be they of ever so long continuance (t), (although he cannot turn the lessees out of possession) (u) *fructus industriales*, fruits of industry, as corn growing, or sown on the ground, which go to the executor; and if he sell the corn on the land, the party to whom the sale is made shall have liberty of cutting and carrying it away by virtue of such sale (x). But fixtures or furnaces annexed to the freehold, apples upon trees, which belong to the freehold, and go to the heir, cannot be seized by the sheriff on this writ, because they are not *bona et catalla*, goods and chattels, and consequently not within the authority of the writ; and at common law could not be touched by an execution (y).

Sheriff's authority, and what he may seize.

What he must not seize.

So where machinery affixed and demised with the freehold had been wrongfully severed by the tenant, they could not be taken by the sheriff, as the tenant could acquire no property by such wrongful act (z).

And if the lessor of premises and machinery is deprived of his remedy of distress by the acts of the sheriff, he may maintain an action against him on 8 Ann. (a).

c. 14.

A mansion-house, &c. being excepted in leasing powers under a marriage settlement, does not exempt them from being taken in execution during the life of the tenant for life (b).

Where lands and a mill were mortgaged, and the mortgagor continued in possession, yet being consistent with the deed, held that the latter could not be taken in execution, although a jury had found that it was not affixed to the freehold (c).

It is a *quære* whether he may seize and sell the grass *growing*; because grass grows naturally out of the land

(s) 8 Rep. 75.

(t) 4 Co. 74.

(u) 2 Show. 85. 1 Salk. 368.

(x) 5 Co. 11. Dalt. 145, 556. Cro. El. 374. Owen, 70, 71.

(y) Cro. Jac. 73. 4 Co. 74. Dyer, 363. Gilb. Ex. 19. Winn

v. Ingilby, 5 B. & A. 625.

(z) Farrant v. Thompson, 5 B. & Ald. 826.

(a) Duck v. Braddyll, 1 M'Clel. & Y. 217.

(b) Davis v. D. of Marlborough, 2 Wils. Ch. 145.

(c) Steward v. Lombc, 1 Brod. & B. 506.

without any tillage, but after it is cut down there can be no doubt(*d*).

Money of defendants in the hands of the sheriff.

If a plaintiff cannot find sufficient effects of the defendant to satisfy his judgment, the court will order the sheriff to retain money in his hands of the defendant, which he had levied in another action at the defendant's suit, provided the attorney's bill be deducted; and *Lord Mansfield* said, there were old cases, where it was held that the sheriff could not take money though found in defendant's scrutoire, and that a quaint reason was given for it. *viz.* that money could not be sold(*e*).

Bank notes.
Deeds.

It is said bank notes cannot be taken in execution. Deeds and writings cannot be taken in execution(*f*). But the sheriff is entitled to recover, as money had and received, surplus monies, after a distress by the landlord, which have got into the hands of a subsequent execution creditor, as the seizure can only be made by the sheriff, and he is to dispose of the proceeds according to priority in law(*g*).

Personal estates liable.
Gowns.
Sheriff may take moveables.

The whole estate personal is liable to be sold under a *fi. fa.* except wearing apparel; and it hath been held, that if the party hath two gowns, the sheriff may sell one of them(*h*). And the sheriff may take moveable goods, as cattle, corn in the barn, &c. household stuff, *money*(*i*), plate, apparel, &c.

Goods pawned, demised or distrained, or let on hire.

Goods pawned shall not be taken for the debt of him who pawned them, during the time they are pawned(*k*). Nor goods demised, or letten for years, or on hire(*l*); nor goods distrained, not *before seized* on an execution(*m*), unless such first execution were by fraud(*n*). But the reversioner is bound to give notice to the sheriff that the party has only a qualified interest(*o*). So where *A.* lent money on the security of a ship, and took possession before an execution of *B.* executed, held that the vessel could not be seized under his execution(*p*). The sale of farming stock taken in execution is now regulated by statute.

Farming stock.
56 G. 3. c. 50.

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|---|---|
| (<i>d</i>) Dalt. 556. | (<i>i</i>) 12 Mod. 614. |
| (<i>e</i>) <i>Armistead v. Philpot</i> , Doug. 230. <i>Sed vide</i> 4 E. R. 510. 9 E. R. 48. 2 N. R. 376. | (<i>k</i>) Kitchen, 226. |
| (<i>f</i>) <i>Francis v. Nash</i> , Rep. T. Hard. 52. <i>Sed qu.</i> | (<i>l</i>) <i>Gordon v. Harper</i> , 7 T. R. 9. 1 Ry. & M. 99. |
| (<i>g</i>) <i>Sawle v. Paynter</i> , 1 D. & Ry. 307. | (<i>m</i>) Bro. Pledges, 28. Cro. Car. 149. 1 Roll. 893. 1 Show. 174. |
| (<i>h</i>) 3 Co. 12. Comb. 356. Co. Litt. 390. b. Dalt. 115. | (<i>n</i>) Forres. 37, 38. |
| | (<i>o</i>) <i>Dean v. Whitaker</i> , 1 Carr. N. P. C. 347. |
| | (<i>p</i>) 2 T. R. 619. |

If a soap-boiler, or other trader, being an under-tenant, for the convenience of his trade, puts up vats, coppers, tables, partitions, and paves the back-side, &c. the sheriff may take them on a *fi. fa.* in the like manner as the lessee might have removed them during the term (*q*). Otherwise, where such trader makes hearths and chimney-pieces to complete the house, and not for the convenience of his trade, or where they are leased with the premises (*r*).

If a soapboiler, &c. being an under-tenant, puts up vats, &c.

If, on an execution against one of two partners, the partnership goods are taken and sold, the sheriff may seize and sell all; and he is to pay over to the other a share of the produce proportioned to his share of the partnership effects (*s*).

If execution against partners.

It is said that he must seize the whole, and sell a moiety thereof undivided, for that the vendee will be tenant in common with the other partner (*t*).

Must seize the whole and sell a moiety.

A person had an annuity for twenty-one years, granted by *Q. Eliz.*, payable by her receiver of her court of wards, which, on a *fi. fa.*, was extended and sold, and held good; for being an annuity for years, and payable by the receiver, it is in nature of a rent-charge for twenty-one years, and is grantable over and vendible, and not like an annuity which chargeth the person only (*u*).

An annuity for years may be taken.

The goods ecclesiastical of clergymen are not to be taken by the sheriff, but by the bishop (*x*), who may seize and sell the profits of the benefice, and he must return *fieri feci*, and not *seq. feci*, upon the writ (*y*). The bishop may, like the sheriff, be called upon to return the writ by rule of court; and if he make a false return, will be liable to an action (*z*).

Goods ecclesiastical not to be taken.

Bishop may be called on to return the writ by rule.

The sheriff, by his authority, has a right (as before said) to sell a term for years; and if he sells it with the general words, "*All title, estate, right and interest of the defendant*," the sale is good, though there be a mistake in the reciting of the commencement or end of such lease; for the sheriff hath the same authority to sell the defendant's goods, in order to execute the judgment, and

Sheriff may sell a term for years.

And if he sells with the general words, "*All, &c.*" it is good.

(*q*) Salk. 368.

(*t*) 1 Show. 173. Comb. 217.

(*r*) 3 Stark. N. P. 130. Izod v. Lamb, 1 Jerv. and Cr. Ex. R. 35.

Salk. 392.

(*u*) York v. Fuirne, Cro. Jac. 7.

(*s*) Eddie v. Davidson, Doug. 627, and 3 B. & P. 289. 3 Carr. & P. 308.

(*x*) 2 Inst. 472.

(*y*) 2 Mod. 257.

(*z*) 1 Str. 87. Gilb. Exec. 26. 1 Ld. Ray. 265.

pay the defendant's debts, as the defendant had over his own property; and therefore as such general words would have passed his chattels from the defendant, so it shall in case of the sheriff, who is to satisfy the defendant's debt.

And if the sheriff, reciting that the defendant hath a term for years, sells it by virtue of a *fi. fa.*, the sale is good, for it cannot be intended that the sheriff should certainly know the beginning and end of the term. It is sufficient for him to state that the defendant is possessed of a term of years yet to come and unexpired, and to assign all his interest therein *generally*, for if he attempt to state it particularly, and fail, the vendee will not have good title (*a*). And an assignment may be executed by him after he is out of office. Having seized the goods, he is bound to do every act necessary to complete the sale (*b*).

What is sufficient to state.

May sell an estate *pur auter vie*, since the stat.

It is said that a sheriff, on a *fi. fa.* or *levari facias*, cannot sell an estate for life, which, being a freehold, can be no more affected by these writs than any estate of inheritance (*c*). But it seems to be admitted that the sheriff, since the 29 *Car. 2*, may sell an estate *pur auter vie* (*d*).

If defendant will go out of possession.

If the defendant will consent to go out of possession on *sale of the lease*, the sheriff may put the vendee in possession; but he cannot be *forcibly* expelled. And where the execution is against the landlord, the sheriff cannot turn the tenant out of possession (*e*). The vendee must bring his ejectionment, if he refuse (*f*).

Equity of redemption.

Where the defendant has only an equity of redemption of a leasehold estate, it seems that an execution will not affect it, as the legal estate is in the mortgagee. The plaintiff's only remedy in that case is by filing a bill in equity to redeem the estate, by paying off the principal due on the mortgage (*g*).

Mere equitable interest cannot be taken.

It is now decided that a mere equitable interest in a term of years cannot be taken in execution by the sheriff under a writ of *fi. fa.* (*h*).

(*a*) Cro. El. 584. Palmer's case, D. of Marlborough, 2 Wils. Ch. C. 4 Co. 74. 3 T. R. 294. 145.

(*b*) Doe v. Donston, 1 B. & A. 230. (e) 3 T. R. 298. Roll. Abr. 893. 6 Mod. 295. (f) 2 Show. 85.

(*c*) 3 Co. 13. (g) 3 Atk. 739.

(*d*) Comb. 291. See vide Davis v. (h) Scott v. Scholey, 8 East, 467; and 2 N. R. 461.

The sheriff may take goods fraudulently sold or conveyed away by the defendant; and a principal badge of fraud is the defendant's continuing in possession (*i*). May take goods fraudulently sold.

If the former creditor takes a bill of sale, and the transaction is notorious, and he sells his interest to a third party, who suffers the defendant to remain in possession, it will be for the jury still to say whether the first transaction were fraudulent or not (*k*).

In all such cases, where goods in the possession of the debtor are claimed by third persons under a previous assignment, &c., the validity of such assignment depends upon two points; 1st. a possession accompanying the deed, and according to it, and that notorious to all the world; and 2dly, a lawful consideration, which excludes the idea of fraud (*l*).

If a creditor by *fi. fa.* seize the goods of a debtor, and suffer them to remain long in the debtor's hands, and another creditor obtain a subsequent judgment and execution, it has been determined that this is evidence of fraud, and the goods in the hands of the debtor remain liable (*m*). If a creditor by *fi. fa.* seize goods and suffer them to remain long, and another execution come, it is evidence of fraud.

If a defendant sells his goods *bonâ fide*, and for a valuable consideration, before the delivery of the writ to the sheriff, they cannot be taken in execution; and though he sell them fraudulently, yet if they afterwards be sold to another *bonâ fide*, they are not liable to be taken in execution in the hands of the *second* vendee (*n*). If there be a *bonâ fide* sale before delivery of the writ, cannot be taken; if sold fraudulently, and he sells to another.

In an action against the husband, goods cannot be taken in execution on a *fi. fa.* if vested in trustees for the benefit of the wife (*o*). Nor the goods of a party passing as his wife; *aliter* as against assignees where the goods are in the bankrupt's order and disposition (*p*). Goods of wife settled cannot be taken.

So goods sold by the trustees of creditors of plaintiff, and purchased for the use of his mother, who continued in possession, held protected by such *bonâ fide* assignment (*q*).

(*i*) Pr. Ch. 286, 7.

(*k*) Latimer v. Batson, 4 B. & Cr. 652. (*m*) 1 Ves. 245. 456; and Lovick v. Crowder, 8 B. & Cr. 132.

(*l*) See Edwards v. Harben, 2 T. R. 587. (*n*) Godb. 161.

Woodham v. Baldock, 3 B. Moore, 11. (*o*) Cowp. 432. 3 T. R. 618.

Armstrong v. Baldock, 1 Gow. N. P. 33. (*p*) Edwards v. Bridges, 2 Star. 396; and Glasspoole v. Young, 9 B. & Cr. 696.

Steward v. Lombe, 1 Br. & Bing. 506. (*q*) Leonard v. Baker, 1 M. & S. 251.

And where *A.* procured a license in *B.*'s name, and placed him in a public-house, &c., the liquors furnished by him could not be taken under an execution against *B.* But where there has been only an agreement without actual assignment, it is otherwise (*r*).

The goods of a testator cannot be taken for a debt of the executor.

And in an action against an executor for his own debt, the goods of the testator, in the hands of the defendant, cannot be taken in execution (*s*).

But where an executrix used the goods of her testator as her own, and afterwards married, and then treated them as the goods of her husband, she shall not be allowed to object to their being taken in execution for her husband's debt (*t*).

He cannot lend himself to any accommodation between parties; as where he was instructed not to levy unless another execution came in; held that he was bound to satisfy the latter writ first, and that an action could not be sustained against him for a false return (*u*).

Voluntary confession of a judgment, on which execution is immediately issued, is good, though another have a judgment and threaten to enter it up.
c. 5.
c. 16. s. 108.

If *A.*, indebted to *B.* and *C.*, after being sued to judgment and execution by *B.*, go to *C.* and voluntarily give him a warrant of attorney to confess judgment, on which it is immediately entered, and execution levied on the same day on which *B.* would have been entitled to his execution, and had threatened to sue it out, the preference so given by *A.* to *C.* is not unlawful, nor fraudulent within the 13 *El.* (*x*). But now, by 6 *Geo.* 4, providing that in cases of bankruptcy an execution creditor shall derive no benefit under a judgment by *nil dicit*, the assignees have a legal remedy against the sheriff for monies levied under it (*y*).

If a man know of a judgment and execution, and, with a view to defeat it, purchase goods, void.
c. 5.

If a man know of a judgment and execution, and, with a view to defeat it, purchase the debtor's goods, it is void, because the purpose is iniquitous. *Lord Mansfield*, commenting on the 13 *El.*, said, if the transaction be not *bonâ fide*, the circumstance of its being done for a valuable consideration will not alone take it out of the statute (*z*).

- (*r*) 3 Taunt. 256. 1 Marsh. 10. (*x*) *Holbird v. Anderson*, 5 T. R. 235.
(*s*) *Farr v. Newman*, 4 T. R. 621.
(*t*) 1 Bos. & P. 293. 2 Esp. 657. (*y*) *Mitchell v. Knott*, 1 Sim. Ch. R. 497. *Taylor v. Taylor*, 5 B. & Cr. 392. *Notley v. Buck*, 8 B. & Cr. 160.
(*u*) *Pringle v. Isaac*, 11 Pri. 445. (*z*) 5 T. R. 238.

If a man recovers damages against a corporation, he shall not have execution of the goods of the singular men in their natural capacity, but of the goods of the corporation. So, if a corporation be fined, it shall be levied of the goods of the corporation.

Corporation goods may be taken.

8 H. 6. 1.

19 H. 8. 64.

26 H. 6.

9 H. 6. 36.

If there is a levy made, and an extent afterwards, comes too late.

The property of the goods is vested by the delivery of the *fi. fa.*, and an extent afterwards for the king comes too late, and that on the statute of frauds(*a*). For when a judgment is once executed, the goods are *in custodia legis*, and neither Exchequer process, or assignment from commissioners of bankrupts, will touch them(*b*).

But where, after seizure, and at the instance of the plaintiff's attorney, the officer withheld further proceedings, and in the interim the goods were seized under an extent, the court refused to fix the sheriff(*c*). So, wherever there has been any arrangement or collusion with the plaintiff or his attorney, although there may have been some irregularity on the part of the sheriff(*d*).

The sheriff is bound, at his peril, to take only the goods of the defendant; for if he takes goods of *a stranger* he is liable to an action in trover or trespass(*e*). Therefore, if he doubts whether the goods shown him are the defendant's, he may summon a jury, *de bene esse*, to satisfy himself whether the goods belong to the defendant or not: this will justify him in returning, that the defendant has no goods within his bailiwick, and mitigate damages in an action of trespass, if the goods seized should not happen to be the defendant's(*f*).

Bound at peril to take goods of the defendant.

So where he seized the goods and stock of which the assignees of the debtor had been several months in possession, and the commission was not in dispute, the court refused to stay the proceedings against him(*g*).

And a public sale is only valid and binding where he seizes and sells as directed by the writ. If he seize the goods of a wrong person, trover lies(*h*).

In an action for a false return *nulla bona*, the defence that the goods are a stranger's may be repelled, by show-

(*a*) Comb. 123.

(*b*) Letchmere v. Thorowgood, 3 Mod. 236; and see 1 Taunt. 120.

(*c*) Ruston v. Hatfield, 3 B. & A. 204.

(*d*) 1 Ch. 613.

(*e*) Keb. 639.

(*f*) Dalt. 146. Doug. 40. Farr v. Newman, 4 T. R. 648. S. P. Gilb. Ex. 21.

(*g*) Bernasconi v. Farebrother, 7 B. & Cr. 379.

(*h*) 3 Stark. 130.

ing that the appointment to such stranger was merely *colourable*(i).

If inquest taken,
not evidence.

If such an inquest be taken, it is not admissible evidence in an action of trover, brought by the person in whose favour it is found, against the sheriff. And *Eyre*, C. J. said, Inquests of office are always traversable. In trespass, where the sheriff was the real defendant, and not the nominal one, as in the present instance, such an inquisition would perhaps be evidence to lessen the damages by a sort of *argumentum ad hominem*(k).

And in an action for a false return, such inquisition was holden altogether inadmissible(l).

Sum levied on
a corporation.

If a sum is to be levied on a corporation, it may be levied upon the mayor or chief magistrate, or upon any person being a member(m).

The sheriff may
return levied,
and the goods
remain in his
hands for want
of buyers.

The sheriff may return on this writ, that the goods remained in his hands *for want of buyers*; and this return is good, because the sheriff is directed to levy the money from the goods, which implies an authority to sell them; yet he may not be able to find buyers, and therefore such return is to be allowed(n). For he ought not to sell the goods far below the value, but wait for a *vend. exp.*(o). But after this return a *vend. exp.* may issue, to give the sheriff further power to sell after the first writ is returned, and to oblige him so to do; for though he may sell after the return, since by the seizure he had the property of the goods in order for sale, yet he is not obliged to sell without this writ, and therefore it issues out in order to bring the money into court(p). And the court granted the writ when the goods were of fluctuating value, and likely to be injured if remaining unsold, but as against the crown, on terms(q).

After such
return a *vend.*
exp. issues.

Sheriff may
return to *vend.*
exp. that goods
remain for want
of buyers.

The court will not grant an attachment against the sheriff because he returned to writ of *vend. exp.* that part of the goods levied remain in his hands for want of buyers. The plaintiff may set up a purchaser of the goods himself(d).

(i) 3 Camp. 47. *Sed vid.* 3 M. & S. 177.

(k) *Latkow v. Eamer*, 2 H. Bl. 437.

(l) *Glossop v. Pole*, 3 M. & S. 177.

(m) Str. 367.

(n) Yelv. 44. Sid. 438. 2 Saund. 17. Mod. 751. Vent. 52.

(o) *Keightley v. Birch*, 3 Camp. 521; but see 1 Stark. 41.

(p) Cowp. 406.

(q) *R. v. Cripps*, 3 Pri. 606.

(r) 1 B. & P. 359. *Sed vide* Ib, 360. S. P. Anon. 2 Ch. 390.

The sheriff cannot detain the goods on an execution in his own hands, and satisfy the debt of his proper money, but he ought to sell them upon a *vend. exp.*, and may return, on his so doing, that they remain in his hands for want of buyers. For the law requires of sheriffs a strict execution and observance of the writs directed to them (*s*). Neither are the goods to be delivered to the defendant, but ought to be sold (*t*).

The sheriff cannot detain goods in his own hands and satisfy the debt, but he ought to sell.

Goods ought not to be delivered to the defendant.

A sheriff having once seized is bound to proceed, even after he is out of office, and an assignment, therefore, subsequently executed is valid (*u*).

Nor can he retain the proceeds in his hands to satisfy an execution against the original execution creditor (*x*).

After a return that he has seized but not sold, after a *vend. exp.*, the party becoming bankrupt, and the plaintiff having notice thereof, the sheriff is not bound by such return, being still liable to the assignees (*y*).

When the sheriff has, by virtue of the *fi. fa.*, seized any goods, the property of the goods is altered by the authority of the law; and therefore if a writ of error be brought, and a *supersedeas* issues, it does not hinder the sheriff from proceeding to sell on such execution, and he may do it after such *supersedeas*, which is no more than a restraint from proceeding on that writ, if he has not already proceeded upon it, and is not a writ of restitution to restore the goods, if he has already altered the property: and therefore if the property is altered, he is at liberty to proceed according to the command of the first writ, since the property was altered by such writ before the *supersedeas*; but if the *supersedeas* had issued *quia improvidè, because irregularly*, there the defendant should have been restored to the goods, for such *supersedeas* is in the nature of a restitution, for it sets aside the *fi. fa.* because it issued irregularly. If the sheriff has seized goods on the *fi. fa.*, though the plaintiff in error has a *supersedeas* afterwards, by which the sheriff is ordered to stop further execution, yet the property of the goods being altered by the seizure, the sheriff may sell them; and if he does not, the court will award a *vend. exp.*, even though the original record be removed; for

By seizure the property of the goods is altered, therefore if error be brought, and a *supersedeas* issues, it does not hinder sale.

But if *supersedeas* issued irregularly, then defendant to be restored.

If the sheriff has seized, though plaintiff in error has a *supersedeas*, yet the property being altered, sheriff may sell.

(*s*) Noy, 107. Langdon v. Wallis, Lutw. 589. (x) Padfield v. Brine, 3 Br. & B. 294.

(*t*) 2 Vent. 95.

(*y*) Brydges v. Walford, 6 M. & S. 42.

(*u*) Doe v. Donston, 1 B. & A. 230.

upon filing the *fi. fa.* there is a record in court sufficient to ground further process upon (*h*).

Where it appeared that a writ of error had been allowed the day previous to the seizure, though no notice was given until after, held that the writ was a *supersedeas* from the time of its allowance (*i*). It was, however, afterwards decided, that the sheriff ought to have returned that such writ of error was allowed, and then the court would have relieved him, but that the return of *nulla bona* was bad, and therefore the plaintiff entitled to nominal damages.

If sheriff returns that he has goods to the value of 72*l.* which remain, &c. he may sell them for less.

If the sheriff returns that he has goods to the value of 72*l.* which remain in his hands for want of buyers, it is no estoppel, but that he may sell them for less; for it appearing on the return that they are not sold, but that they remain in specie in his hands, the value cannot be so set but that it may be altered between that and the sale; therefore, if on the *vend. exp.*, it appears that he has sold those goods for less, the plaintiff may have a new execution for his debt (*k*).

Yet if he values them so high as none will buy.

Yet if the sheriff values them so high as none will buy them at that rate, he must himself (*l*).

No appraisement on *fi. fa.*

It is said, on a *fi. fa.* there need no appraisement, but on an *elegit* there must (*m*).

If sheriff levies 20*l.* of goods, and sells for 40*l.*

If a *fi. fa.* be awarded to the sheriff to levy 20*l.*, and he sells to the value of 40*l.*, and returns the *fi. fa.* with the 20*l.* in court, he may detain the surplusage until demand made of it; for he is not bound to search out the defendant. He ought not to take more than will satisfy (*n*).

But if he returns, taken cattle to the value of 100*l.* and they die for want, plaintiff shall have the value.

But if the sheriff returns that he has taken cattle to the value of 100*l.*, and they die afterwards for want of meat, the plaintiff shall have the value from the sheriff, because by the sheriff's own default it is become impossible that it should be reduced to any other certainty than what is mentioned on the return (*o*).

If he levies, though no return, he is liable to an action.

If the sheriff levies the money upon a *fi. fa.*, though he makes *no return upon the writ*, yet an action of *debt*,

(*h*) Gilb. Exec. 23.

(*l*) R. v. Bird, 2 Show. 87.

(*i*) Cleghorn v. Desanges, 3 B. Moore, 83. 1 Gow. N. P. R. 66.

(*m*) Beeley v. Sampson, 2 Vent. 95.

(*n*) Noy, 69.

(*k*) Cro. El. 598. Cro. Jac. 515. Godb. 276.

(*o*) Cro. Jac. 515. Godb. 276. Hob. 205, 206. Danv. Abr. 79.

account, or *assumpsit*, lies against him and his executors, because it is a debt in the sheriff by the levying the money, and the defendant, by the sheriff's levying the money upon him, can, on a *sci. fa.* to have execution, plead this in bar, or upon a second *fi. fa.* relieve himself by an *auditâ querela*: for the lien of the judgment is discharged by the sheriff's executing the writ; and if the plaintiff had not this action against the sheriff he would be remediless. (*p*). But it is not sufficient to show that the levy was made by a known officer; the writ or warrant must be produced (*q*).

The action lies if his bailiff receives the money, and he returns the goods unsold (*r*).

So it is a false return that "the goods remain unsold for want of buyers," if he has had an inadequate price offered him (*s*).

But where an action for money had and received had been commenced against the sheriff for the money levied, without any previous demand, the court staid the action, and without costs (*t*).

And where the bailiff, by direction of assignees who claimed the goods, sold the same, and retained the surplus in his hands, held that as he was to be regarded as their agent, and acting by their authority, the sheriff was not liable to them (*u*).

If he do return *fieri feci*, the plaintiff may proceed by rule of court, or action of debt, founded on his return to recover it. If return of *fi. feci* be made.

An execution, being an *entire* thing, cannot be superseded after it is once begun; therefore if a writ of execution be executed *before* a writ of error allowed, or *notice*, it may be returned afterwards: and the utmost length of time the law allows for executing a writ is the day whereon it is returnable: so long as it is executable, but not executed, the allowance of a writ of error is a *superseas*, but not afterwards (*x*). Error a *superseas* if served in time. But in a late case, where the sheriff entered *after service* of allowance of writ of error, and no bail being put in pursuant to the statute, But if bail be not put in.

(*p*) Sir W. Jones, 430. Roll. (*s*) Barnard v. Leigh, 1 Stark. 41.
Abr. 598. 921. And see Dale v. (*t*) Jefferies v. Sheppard, 3 B. & A.
Birch, 3 Camp. 347. 696. 1 Br. & B. 370.

(*q*) Wilson v. Norman, 1 Esp. 154. (*u*) Cox v. Palmer, 6 B. & Cr.
Drake v. Sykes, 7 T. R. 113. 739.

(*r*) Jones v. Wood, 3 Camp. 228. (*x*) 1 Salk. 321.

the court held the writ of error became an absolute nullity, and was no *supersedeas* (y).

If defendant pays the sheriff before entry he cannot enter afterwards.

If the sheriff have a *fi. fa.* against a man's goods, and before execution he pays him the money, in this case he cannot do execution after, and if he do, trespass lies. Nor can he deliver them to the plaintiff in satisfaction of the debt, but he must return to the court the execution of his writ (z). Nor can a court of equity set aside a sale to the plaintiff (a).

If there remain a surplus after sale.

If upon sale money remain in the hands of the sheriff *beyond the debt*, the sheriff *may keep it* till the defendant demands it, and need not deliver it to the defendant *before request* (b).

If goods once legally seized.

If goods be once seized and in custody of the law, they cannot be seized again by the same or any other sheriff (c). This, however, means *legally* seized: for if any thing happen to *dis-affirm* the first seizure, and to show it was not legal, it is considered as no seizure in law (d). And he cannot resume possession of goods, if once abandoned, after the return of the writ (e).

If A. lend money on the security of a ship, and take possession *before execution executed* at the suit of B., the vessel cannot be seized under B.'s execution (f).

If a tender is made of the debt.

If the defendant tenders the debt, it is wrong for the sheriff to sell the goods (g).

If sheriff levy and give the money to the plaintiff.

If the sheriff levy the money and give it to the plaintiff, though he never made any return to the court, it is good enough (h); for the end of the execution is answered: and if paid over to assignees with knowledge of the plaintiff, he being one, it is a sufficient ratification of the payment to discharge the sheriff (i).

Payment on a *fi. fa.* a good plea.

Payment to the sheriff on a *fi. fa.* is a good plea, because he hath authority to levy the debt (k).

If he takes goods may sell at any rate, for ready money.

When a sheriff takes goods in execution, he may sell them at any rate, if defendant refuses to pay the debt,

(y) 2 T. R. 45.

(e) Ackland v. Paynter, 8 Pri. 95.

(z) Cro. El. 504. Noy, 56. Dalt.

(f) Ladbroke v. Crickett, 2 T. R.

529.

649.

(a) Stratford v. Twynam, 1 Jac.

(g) 1 Keb. 655.

418.

(h) 4 Rep. 64.

(b) Noy, 52.

(i) Tomlinson v. Shynn, 2 Br. &

(c) 1 Show. 174.

B. 77.

(d) Far v. Newman, 4 T. R. 651.

(k) 2 Lev. 203. Taylor v. Bekon, 2 Jon. 97. Skin. 665. 5 Mod. 296.

and for ready money, because he is immediately charged to the party for whom the sale was (*l*). And although a plaintiff is not bound by the price of the goods at the sale, yet if he were as assignee bound to sell it might be a fair measure of damages (*m*).

This writ does not abate by the plaintiff's death, but the sheriff must go on to execute it (*n*). Does not abate by death.

The court will not compel a sheriff to amend his return to a *fi. fa.* by specifying the several goods sold, where no criminal act is shown. In case of waste, or other misconduct, the remedy is by action (*o*). Amending a return.

If the purchaser, by omitting to demand the goods until after the sheriff is bound to pay over the money, prevents his satisfying a lien claimed by the party who holds them, the sheriff is not liable to the purchaser (*p*).

In actions on simple contracts and judgments for a debt certain, the expenses of levying must be paid by the plaintiff, who is then the party grieved, under the 29 *El.*; but if it be for a penalty, then by the defendant (*q*). Expenses of levying. c. 4.

In debt on simple contract, where there is judgment by default, the plaintiff may not levy the expenses of the execution, though the whole does not exceed the debt upon record (*r*).

In an action against the sheriff, whatever would be evidence against the principal is also admissible against the sheriff; as an admission of receipt of notice of dishonour of a bill (*s*). Evidence against the sheriff.

Applying for Time.

If the sheriff be called on to return the writ, and the property of the goods disputed, which frequently happens on a commission of bankrupt, &c., he may apply for time to make his return, on bringing the money into court, till the right be tried between the contending parties, or one of them has given a sufficient indemnity (*t*). As to time to make return.

(*l*) Vent. 7. Morley v. Staker, 6 Mod. 83. (*q*) 2 T. R. 157. 3 B. & P. 362.

(*m*) Waterhouse v. Atkinson, 3 Carr. & P. 345. (*r*) 3 B. & P. 362.

(*n*) Mod. Cas. L. and Eq. 225. (*s*) Williams v. Brydges, 2 Stark. 42.

(*o*) Willet v. Sparrow, 6 Taunt. 576. (*t*) Semple v. Ld. Newhaven, 2 Bl. R. 1064. M. 24 Geo. 3. B. R.; and Hill v. Hook, E. 26 Geo. 3. B. R.

(*p*) Duncan v. Garratt, 1 Carr. 7 Term Rep. 177.

N. P. C. 169.

c. 37. s. 21.

And the court of K. B., upon a suggestion of a reasonable doubt, whether the goods seized under the *fi. fa.* were not covered by an extent afterwards issued at the suit of the crown for malt duties, under the 28 *G. 3.*, enlarged the time for the sheriff to return the writ, for the purpose of inducing the plaintiff to go into the court of *Exchequer*, and there contest the question of right with the crown in a more eligible manner than in this court (*u*). And Lord *Kenyon* said, that it was not merely for the sheriff's asking that the court would grant him time to make his return, but there must be some reasonable doubt suggested. This is a case in which it may be difficult to decide whether the goods are bound by the extent or liable to the plaintiff's execution. It appears that the court of *Exch.* have anxiously endeavoured to put the case in such a situation that all the parties interested may come in and support their respective claims; therefore I think that the sheriff ought not to be put to the difficulty and hazard of deciding in this case, where there is a shorter mode pointed out of determining the rights of all the parties: a decision here will not decide the rights of the crown; whereas by the determination in the *Exchequer*, all the parties will be bound (*x*).

If *fi. fa.* be
against one of
several partners.

If a *fi. fa.* issue against one of several partners, the court will not, at the request of the partnership creditors, give the sheriff time to return the writ until account be taken; and it was observed, that the safest line for the sheriff to pursue, was to put some person into possession of the defendant's share as vendee, leaving him and the parties interested to contest the matter in equity (*y*).

Protection to Sheriff.

The court will interfere to protect the sheriff where the property in goods is disputed, and both parties refuse to indemnify him (*z*).

Where the assignees of the debtor and the creditor refuse to indemnify the sheriff, the court will protect him proceeding to sale under the *fi. fa.* after notice of bank-

(*u*) *Wells v. Pickman*, 7 T. R. 174. (*z*) *M'George v. Birch*, 4 Taunt. 585. *Beavan v. Dawson*, 6 Bing. 566.
(*x*) 1 Taunt. 120. 1 East, 338.
(*y*) 3 B. & P. 288.

ruptcy from the former(*a*). And they will protect him proceeding to a sale after notice of bankruptcy, where both parties refuse to indemnify him.

Where defendant became bankrupt after the levy, and his assignees claimed the goods, and plaintiff refused to indemnify the sheriff, the court stayed the return of the writ(*b*).

So where an action had been commenced against the sheriff after the time for returning the writ had been enlarged, the court made the rule absolute for staying the proceedings and indemnifying the sheriff on terms(*c*).

And now, the more effectually to relieve sheriffs and other officers executing process against goods, to which third parties make claim, it is now provided by 1 & 2 W. 4. c. 58. s. 6, that upon such claims being made to goods taken or intended to be taken in execution, such sheriff or officer may apply to the Court, before or after the return of such process, and before or after any action brought against such sheriff, to call before them by rule of court, as well the party issuing such process, as the party making such claim, and for the adjustment of such claim to make such rules and decisions as shall appear just, and the costs of such proceedings to be in the discretion of the Court; such rules to be entered of record and made evidence, as of any other judgment.

Relief by motion of Interpleader.

Upon this act some important decisions have taken place, which it is material to notice.

Where the sheriff had voluntarily put himself into the situation from which he sought to be relieved, the Court refused the application(¹).

There must have been an actual claim made; mere apprehension is insufficient to found the jurisdiction(²).

So a mere notice of bankruptcy is insufficient(³).

And he must apply promptly, or he will be held to have made his election(⁴).

(*a*) *King v. Brydges*, 7 Taunt. 291; *Semb. contra Skipper v. Lane*, 10 Bing. 704.
and *Burr v. Creethy*, 7 B. Moore, 368; and *vide infra Return of Writs*. (³) *Bentley v. Hook*, 2 Cr. & M. 426.

(*b*) *Ledbury v. Smith*, 1 Ch. 294.

(*c*) *Probinia v. Roberts*, 1 Ch. 577.

(¹) *Belcher v. Smith*, 9 Bing. 82.

(²) *Isaac v. Spilsbury*, 10 Bing. 3;

(⁴) *Cook v. Allen*, 1 Cr. & M. 542;

Devereux v. Johnson, 1 Dowl. P. C. 548.

So if he has accepted an indemnity which he is not bound to accept⁽⁵⁾.

Nor will the Court relieve him where he has parted with the possession⁽⁶⁾, or paid over the proceeds of the levy⁽⁷⁾.

The act being highly beneficial to the sheriff, the Court will not give him costs upon the rule, nor of keeping possession; but if the execution creditor does not appear, will direct him to withdraw from the possession⁽⁸⁾.

Where the claimant obtained leave to open the rule, the Court allowed the sheriff the costs of a second appearance.

Costs.

The sheriff, if he acts fairly, will not be liable to pay costs; but where he omitted to pay the rent, and the landlord, claiming in proper time, was made a party to the rule, the Court held the sheriff liable for his costs⁽⁹⁾, and where a distress was on the goods at the time of the levy, he was held bound to satisfy it, and the Court refused to relieve him⁽¹⁰⁾. And if he brings parties before the Court, having no foundation for their claim, he will be liable to costs⁽¹¹⁾. But where neither party appeared, the Court gave costs to the sheriff as well as to the plaintiff⁽¹²⁾. On such application the sheriff is not bound to deny collusion⁽¹³⁾.

Where execution creditors in different courts are claimants, the Court will not interfere⁽¹⁴⁾. Cause cannot be shown at chambers against a rule *nisi*, obtained by the sheriff⁽¹⁵⁾.

With respect to the King's Debts.

c. 39. s. 74.
King's debt to
be preferred to

By 33 H. 8. the king's debt shall be preferred before the suit of any person, and shall have first execution,

⁽⁵⁾ *Levi v. Champneys*, 2 Dowl. 454.

⁽⁶⁾ *Chalon v. Anderson*, 3 Tyrw. 237.

⁽⁷⁾ *Anderson v. Calloway*, 1 Cr. & M. Ex. 182.

⁽⁸⁾ *Field v. Cope*, 2 Cr. & Jerv. 480; *Bowdler v. Smith*, 1 Dowl. 417; *Bryant v. Ikey*, lb. 428.

⁽⁹⁾ *Clarke v. Lloyd*, 2 Dowl. P. C. 59.

⁽¹⁰⁾ *Haythorn v. Bush*, 2 Dowl. P. C. 611.

⁽¹¹⁾ *Bishop v. Hinxman*, 2 Dowl. P. C. 166.

⁽¹²⁾ *Philby v. Ikey*, lb. 222; *S. P. Lewis v. Eickey*, 2 Cr. & M. 321.

⁽¹³⁾ *Dobbins v. Green*, 2 Dowl. P. C. 509; *Downiger v. Hinxman*, lb. 421.

⁽¹⁴⁾ *Bragg v. Hopkins*, 1 Dowl. P. C. 151.

⁽¹⁵⁾ *Shaw v. Roberts*, 2 Dowl. P. C. 25.

so that his suit be taken and commenced, or process awarded for the debt at the suit of the king, *before judgment* be given for the said other person. that of the subject.

If the king's extent be sued out *posterior* to a judgment recovered by the subject, and execution thereon *delivered* to the sheriff, though not executed, the king shall not be preferred(*d*). If extent be posterior to judgment, and execution delivered to the sheriff, the king shall not be preferred.

If goods be taken on a *fi. fa.* against the king's debtor, and, before they are sold, an extent comes at the king's suit, grounded on a bond debt tested after the delivery of the *fi. fa.*, these goods cannot be taken upon the extent(*e*). But if goods be taken on a *fi. fa.* before extent comes, tested after delivery of *fi. fa.*, extent too late.

It seems to be understood to be clear and settled, that if an extent at the suit of the crown be tested *prior* to the time when the subject's execution is delivered to the sheriff, the former shall have the preference. But as by the common law, abridged as it is by the statute of frauds, the property of the debtor's goods is bound by the delivery of the writ to the sheriff, there then remains no property in the debtor on which the prerogative of the crown can attach. Now in this case the sheriff *had* actually *seized* the goods under the execution; and an execution once begun shall proceed; it shall not stop on the issuing of a commission of bankrupt against the debtor: and, in this respect, I know of no distinction between the case of the crown and that of a subject. When the king and the subject stand in an equal degree, the *former* shall prevail(*f*). An execution once begun shall proceed.

But where the crown process does not come in until after sale and delivery by the sheriff, the property is so altered that the execution creditor may maintain an action for the money as had and received on his account(*g*).

Where the sheriff refused to permit a witness to be ex-

(*d*) Uppom v. Sumner, 2 Bl. R. R. v. Sloper, 6 Pri. 114; R. v. Wells, 1251. Com. Dig. 538. R. v. Giles, 16 East, 278.
8 Pri. 293; and 11 Ib. 594.

(*f*) Per Ld. Kenyon, 4 T. R. 111.

(*g*) Swain v. Morland, 1 Br. & B.

(*e*) Rorke v. Dayrell, 4 T. R. 402; 370.

amined to prove the property taken under the extent, or a question to be put in the nature of a cross-examination, the court quashed the writ(*h*).

A return to an inquisition, not finding any fact precisely from which a conclusion can be drawn, so as to enable the party to traverse, is bad, and a new one must be issued(*i*).

For more relating to extents, see title *Return to Writs*, and 56 *Geo. 3. c. 50. infr.* 140.

Landlord.

AT common law, executions took place of all debts that were not *specific liens*, even of rents due to landlords: it was thought hard that landlords should not have something like a *specific lien*; to remedy which, by 8 *Anne*, it is enacted,

c. 14. s. 1.

No goods, &c. shall be taken in execution, unless the party, before removal thereof, pay the landlord the rent due.

“That no goods upon any tenements leased shall be taken by any execution, unless the party at whose suit the execution is sued out shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent of the premises, provided the arrears do not amount to more than *one year's rent*; and in case the arrears shall exceed one year's rent, then the party at whose suit, &c., paying the landlord, or his bailiff, *one year's rent*, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff, as well the money paid for rent, as the execution money.

Proviso not to hinder the queen to levy any debts due to the crown, or fines.

s. 8.

“Provided that nothing in the act contained shall extend to hinder her majesty, her heirs, &c. but that it shall and may be lawful for her majesty, &c. to levy, recover, and seize such debts, fines, penalties and forfeitures, in the same manner as if the act had never been made.”

But before he pays it, he must have some evidence that it is due, or if it turn out that none is due, he is liable to answer for it(*h*).

And as the property is changed by a commission of

(*h*) *R. v. Bickley*, 3 Pri. 454.
(*i*) *R. v. Sherwood*, 3 Pri. 269.

(*k*) *Keightley v. Birch*, 3 Camp. 521.

bankruptcy, the sheriff must prove that he had paid over the rent, without notice of the commission issued (*l*).

This statute extends to execution for the defendant as well as the plaintiff (*m*). This statute is confined to executions on *judgments* (*n*). And it has been determined that the executor of a landlord should have the benefit of this act, as well as the landlord himself, for it is an interest vested (*o*). So also an administrator (*p*). But where goods were taken, and the money levied before administration taken out, it was held, that as the execution was executed, he came too late (*q*): this means that the goods were actually sold. But *Powis, J.*, seemed to be of opinion to the contrary, who held, that the administration should have relation to the death of the intestate, because, by the ecclesiastical law, it is not to be granted within fourteen days of an intestate's death; which the other justices denied, and said, that relations being fictitious ought not to hold place against the right of strangers (*r*).

Executors and administrators within the act.

The landlord's rent must be paid, without deduction of poundage or expenses (*s*).

Must be paid without deduction.

A ground landlord of a house in which an under-lessee dwelt, and against whom an execution was sued, held not within the statute, which extends only to the immediate landlord (*t*); and such an undertaking is not within the statute of frauds (*u*).

A ground landlord not within the act.

The rent must be that at the time of taking the goods, and not that which accrues after and during the continuance of the sheriff in possession (*x*); and during an existing tenancy, not where determined by ejectment (*y*).

It seems that the privilege also extends to cases where by the terms of the demise, forhand rent is due; and it is sufficient for the landlord to prove only the demise

(*l*) *Lee v. Lopes*, 15 F. R. 230.

(*q*) Str. 97. Fortesc. Rep. 460.

(*m*) *Henchett v. Kimpson*, 2 Wilson, 140.

(*r*) *Gillb. Eq. Rep.* 223, 224. 11 Vin. 133, pl. 29.

(*n*) *Brandling v. Barrington*, 6 B. & Cr. 467.

(*s*) Str. 643.

(*t*) 2 Str. 787.

(*o*) *Fortesc. Rep.* 359, 360; *Stra.* 214.

(*u*) 3 Esp. 66.

(*x*) 1 M. & S. 245.

(*y*) 5 B. & Al. 88.

(*p*) Str. 212.

and occupation, and that it is for the defendant to show that all the rent has been paid (*z*).

So where premises were agreed to be assigned, and 100*l.* a-year was to be paid, half-yearly, until the purchase completed, held that the sheriff might treat it as a rent and deduct it (*a*).

Where an officer executing an extent improperly continued on the premises for a longer period than he ought, the court would not permit the rent accruing subsequent to the seizure to be paid out of the proceeds, but left the landlord to his action against the tenant for use and occupation, or the officer for wrongfully continuing on the premises (*b*).

But a trustee of outstanding terms, in trust for a mortgagee, held to be within it, and that the sheriff could not remove goods without satisfying a year's rent (*c*).

Landlord must give notice to the sheriff of rent due.

As the landlord is entitled to one year's rent, he ought therefore to give notice to the sheriff of its being due, for the sheriff is not bound to retain without, nor to know who the landlord is, or what rent in arrear, without such notice; and it is said an action will not lie without such notice (*d*).

But the sheriff will be equally liable to an action, though no notice is given to him of rent being due, if it can be shown that he had knowledge of the landlord's claim by other means (*e*); and he is liable until the goods are sold (*f*). And if he has once removed the goods, he cannot exonerate himself by bringing them again to the premises, for the landlord had lost his remedy of distress whilst in the sheriff's custody (*g*).

When there are two executions, landlord cannot have a year's rent on each.

After the landlord had a year's rent paid out of the execution money, according to the statute, there came another execution, and another year's rent demanded; held, that the intent of the act was to continue a lien as to one year, and to punish him for his laches, if he let more run in arrear (*h*).

(*z*) *Harrison v. Barry*, 7 Pri. 690.

(*a*) *Saunders v. Musgrave*, 2 Carr. & P. 294; and see 5 B. & A. 322.

(*b*) *R. v. Hill*, 6 Pri. 119.

(*c*) *Colyer v. Spcer*, 2 Br. & B. 67.

(*d*) *Waring v. Dewbury*, 1 Str. 97.

Smith v. Russel, 3 Taunt. 400.

(*e*) *Andrews v. Dixon*, 3 B. & A. 645.

(*f*) *Arnitt v. Garnett*, Ib. 410.

(*g*) *Lane v. Crockett*, 7 Pri. 566.

(*h*) Str. 219. 1024.

If an extent comes in, the landlord cannot claim his rent, although distress taken the day before (*i*). So on extent, or an outlawry, although he had distrained three days previous to the entry, and motion to be paid under 8 *Ann.* denied (*k*). If a distress be taken 29th *October*, and an extent dated 4th *November*, and corn, &c. seized, the landlord cannot have his rent, for no property was divested by the distress, and they were in the landlord's hands by way of pledge (*l*). But an attachment was refused, although a contempt to oppose the extent.

An immediate extent against the king's debtor, tested *after* a distress taken for rent justly due to the landlord, with notice to the tenant being the king's debtor, and appraisement of the goods and chattels, but before sale, shall prevail against the distress (*m*).

If notice has been given to the sheriff of the rent being in arrear, and he will not pay, the landlord may move the court to have the same paid out of the money levied, or he may bring an action (*n*); but not money had and received (*o*).

And if the landlord accepts an undertaking (which turns out to be invalid for not expressing the consideration), he cannot afterwards sue on the statute (*p*).

If the goods seized be not sold or removed by the sheriff, so as to transfer the property therein, but defendant pays the debt and costs, though the landlord has given notice, and demanded the rent, yet he is not entitled in such case (*q*).

A bill of sale was made by the sheriff; this was held to be a removal of the goods taken by *fi. fa.* (*r*).

In several cases a distinction has been taken between proceedings at the suit and for the benefit of the crown (*s*), and an outlawry in a *civil suit*; and in the latter instance it was ruled, that "*the landlord ought to be satisfied a year's rent, because a capias utlagatum, at the suit of the party, is to be considered only as a private execution.*" (*t*)

Landlord not entitled to rent on an extent, although he distrain previous to the entry, for no property is altered.

An immediate extent prevails against the landlord's distress, though taken before extent entered.

Landlord's remedy.

If not sold.

Bill of sale made, held to be a removal.

As to rent on a *cap. utlag.*

(*i*) Bunb. 269, pl. 345.

(*k*) Ib. 5, pl. 5.

(*l*) Ib. 42. Vent. 37. 2 Saund. 24.

47.

(*m*) R. v. Cotton, Park. R. 112.

(*n*) Henchett v. Kimpson, 2 Wils.

110. Palgrave v. Windham, 1 Str. 212.

(*o*) Green v. Austin, 3 Camp. 268.

(*p*) Rothery v. Wood, 3 Camp.

24.

(*q*) Sell. Pr. 489.

(*r*) West v. Hedges, Barn. 211.

(*s*) Bunb. 194. Ib. 5. 109.

(*t*) Lawrence, J., St. John's Coll. v. Murcott, 7 T. R. 264.

But if the outlawry be reversed, it would have been contrary.

c. 50.

The 56 *Geo.* 3, for preserving covenants to landlords, where crops are taken in execution, does not extend to the process of the crown (*u*).

Of the old Sheriff's Authority.

Old sheriff may, if he take goods on a *fi. fa.*, sell without a *vend. exp.*, if not, new sheriff to be distrained.

The old sheriff may sell by virtue of the *fi. fa.* after he is out of office, and without a *vend. exp.*; for by the seizure he is answerable for the value of the goods to the parties; though if he returns that they be upon his hands for want of buyers, this is a good return; but if he does not sell them, there shall issue a *distringas* to the new sheriff to distrain, the old one to sell and bring in the money to the new sheriff, so that he may have it ready (*x*). But no *vend. exp.* goes to the old sheriff, because he ceases to be an officer of the court (*y*).

It is stated that a *venditioni exponas* may issue, directed to the new sheriff, where the old one returns that he has taken goods which remain in his hands for want of buyers (*z*). And although it is usual for the sheriff to make a bill of sale to the plaintiff's friend for the amount of the appraisement, the plaintiff cannot compel the sheriff so to do, though he make a promise (*a*).

Vide title Preceding and Succeeding Sheriff.

In what Cases after Sale Restitution shall be.

No remedy for sale undervalue, unless, &c.

If sheriff sells a term, and judgment reversed, party to have the money.

No remedy lies against the sheriff for the sale under value, unless it be by covin (*b*).

If the sheriff sells the term by virtue of a *fi. fa.*, and the judgment is reversed by writ of error, the defendant shall not be restored to the thing in specie, but in money for which it is sold; for the *fi. fa.* gave the sheriff authority to levy the money *de bonis*, of the goods, so that he was obliged to turn the goods of the defendant into money, and, therefore, the restitution must be of what the execution had taken from him, which was money; and not of the term itself, for then nobody would buy; and, therefore, a stranger's interest, which comes to the term

(*u*) R. v. Osborne, 6 Pri. 94.

(*x*) 6 Mod. 299. Salk. 323. 2 L. Raym. 1074.

(*y*) Godb. 276.

(*z*) 2 Saund. 343.

(*a*) Cowp. 403.

(*b*) Keilw. 64, pl. 2.

by due course of law, cannot be affected by reversing of a judgment between the parties, to which he is in no wise privy, provided the sale be without fraud (*c*).

Sale of a term upon an execution by a sheriff for 100*l.* to a stranger, though it was worth 1,000*l.*, yet, upon reversal, he shall not have the term again, but 100*l.* only (*d*). Where a bill was brought to vacate a judgment, (under which a lease was extended and sold by the sheriff to one *Parker*, in trust for the defendant, the conusee of the judgment,) and to have the bill of sale set aside, and an account of the profits, also a writ of restitution of the possession, the lease being of greater value than extended at. And, upon hearing, a decree was made to account and reconvey.

If sold for 100*l.* and worth 1,000*l.* shall have the 100*l.* only.

Where an account was ordered, and a reconveyance.

Where the plaintiff has execution, and the money is levied and paid, and the judgment is afterwards reversed, there, because it appears on the record that the money is paid, the party shall have restitution *without a sci. fa.*; otherwise where it was levied, but not paid, for then there must be a *sci. fa.* suggesting the matter of fact, viz. the sum levied. But where judgment is set aside after execution for irregularity, there needs no *sci. fa.* for restitution, but an attachment shall be granted upon the rule for contempt, if there be not a restitution, provided such rule orders the money or goods to be restored (*e*).

By Levari Facias.

A THIRD species of execution is by writ of *levari facias*, which affects a man's goods and the profits of his land, by commanding the sheriff to levy the plaintiff's debt on the lands and goods of the defendant, whereby the sheriff may seize all his goods, and receive the rents and profits of his land till satisfaction be made to the plaintiff (*f*). It is said that the sheriff may not only sell the goods, but also collect the debts out of the profits of the land, as corn or grass growing thereon, yet, in neither case, hath he authority to meddle with the debtor's lands, so as to sell or deliver such lands to the creditor, in satisfaction of his debt (*g*). Little use is

Levari facias affects a man's goods and profits of the land.

May not only sell the goods, but collect all the debts out of the profits of the land, as corn and grass growing, &c.

(*c*) Mod. 573, pl. 788.

(*e*) 2 Salk. 588. Tidd, 924.

(*d*) Yelv. 180. Goodyer v. Junca, Cro. Jac. 246 Peyton v. Ayliffe, 2 Vern. 314, 315, pl. 302. Vide Gascoigne v. Stut, 3 Ch. Rep. 32.

(*f*) Dalt. 144.

(*g*) 3 Co. 11. Co. Lit. 290, b. 2 Inst. 450. Plowd. 441. Comb. 470.

Little use is now made of this writ.

c. 50.

The most ancient in the law.

Now used where sheriff returns a beneficed clerk.

Bishop may name sequestrators, or the party.

Sequestration to be duly published.

Otherwise it has no priority.

now made of this writ; the remedy by *elegit*, which takes possession of the lands themselves, being much more effectual. And as to the sale of farming stock taken in execution, it is now regulated by 56 G. 3. It was the most ancient judicial process of the law, though it now continues only in three cases, *in the county and manor court, recognizances in Chancery, and a recovery against the heir* on the lands of his ancestor by descent (*h*). It is also used where the sheriff on a *fi. fa.* returns that an ecclesiastic is a beneficed clerk, not having any lay fee. On the return, this writ of *levari* or *fi. fa.* goes to the bishop of the diocese wherein the benefice is, commanding him to levy the sum recovered of the ecclesiastical goods, &c. which are not to be touched by lay hands; and thereupon the bishop sends out a sequestration of the profits of the clerk's benefice, directed to the churchwardens, to collect the same, and pay them to the plaintiff, till the sum be raised (*i*).

The bishop may name the sequestrators himself, or may grant the sequestration to such persons as shall be named by the party who obtained the writ. If the sequestration be laid before the return of the writ, the mean profits may be taken by virtue of the sequestration after the writ is made returnable, otherwise not (*k*).

The sequestration shall be forthwith duly published, by reading it in the church during divine service, and afterwards at the church-door, and fixing a copy thereon; for where a sequestration was made out, and not published while the writ was in force, but was stayed in the register's hands by the desire of the plaintiff's attorney, the court held that it had no priority as against other sequestrations afterwards made out and duly published; but that if it had been published, the execution would have taken effect, and must have been first satisfied, notwithstanding it was then returnable (*l*).

It is a continuing execution, and levy may be made after it is returnable, but when actually returned the bishop's authority is at an end. The mode is to rule the bishop from time to time to return what has been levied; and the court will permit a return to be amended by insert-

(*h*) Bract. 440, F. N. B. 265, 266. Reg. 300.

(*i*) 2 Burn. Eccl. L. 339.

(*k*) 3 Burn's Eccl. L. 317.

(*l*) Legassicke v. B. of Exeter, 1 Cromp. 359. E. 22 Geo. 3. K. B.

ing the sum levied up to the time of its being actually returned (*m*).

This writ also issues out of the Exchequer to levy debts due to His Majesty; and the goods seized, as well as the lands, are to be appraised, and delivered over to the party, according to the appraisement.

It issues out of the Exchequer to levy debts due to the king.

Also it issues out of Chancery to compel appearance and performance of its decrees, and has the same effect to bind the goods as a *fi. fa.*, and if not duly proceeded in, a seizure under a subsequent *fi. fa.* will have the priority (*n*). See 3 G. 1. for poundage.

It is said, upon a *levari facias* to levy the yearly value of 55*l.* found by inquisition on an outlawry upon a judgment in debt, the beasts of a stranger *levant et couchant* on the land may be taken, for they are the issues of the land; and were it otherwise, it would be in the power of the party, by agisting his lands, to defeat the king of the benefit of the outlawry (*o*). But not on a *fi. fa.* for the queen's debt (*p*).

c. 15. s. 3.

The beasts of a stranger, *levant* and *couchant*, may be taken after outlawry.

Though one be in execution for the king, yet a *levari facias* lies *de bonis et catallis*, and by such writ the sheriff may take ready money (*q*).

The sheriff is authorized in suing out a *levari facias* in order to levy a fine imposed upon a party convicted, before the expiration of the sentence of imprisonment, and though done without the immediate authority of the crown, yet the crown may sanction and adopt it afterwards (*r*). The court refused to order him to sell certain books of a blasphemous nature, specified in his return, but quashed the return (*s*).

If he wilfully forbear to sell goods seized for an unreasonable time, an action on the case lies, but the question of reasonable cause of delay is for the jury (*t*).

Elegit.

THE fourth species of execution is by *an elegit*, which is a judicial writ, given by 13 Ed. 1. either upon

Elegit.

c. 18.

(*m*) 2 H. B. 582.

(*n*) Payne v. Drewe, 4 E. R. 523.

(*o*) 1 Salk. 395. 5 Mod. 112.
Carth. 441. Skin. 617. Comb.
431. 469.

(*p*) Cro. El. 431. 1 Roll. Abr.

159. Hard. 101.

(*q*) 2 Show. 166.

(*r*) R. v. Kinnear, 2 B. & A. 609.

(*s*) R. v. Carlisle, 1 D. & Ry. 474.

(*t*) Carlisle v. Parkins, 3 Star. 165.

By the common law a man could have only satisfaction of goods, &c. and not possession of the land.

The statute granted this writ, 13 Ed. 1. c. 18.

If goods not sufficient, then a moiety of the land.

Until this statute lands were not liable to debts, nor are copyhold lands now liable, unless a debt due to the king. Because he is the grand superior lord of all estates.

After *elegit* cannot take the body, if there are lands extended.

a judgment for a debt, or damages, or upon the forfeiture of a recognizance taken in the king's court. By the common law, a man could only have satisfaction of goods, chattels, and the present profits of lands, by the two last-mentioned writs of *fieri facias* or *levari facias*, but not the possession of the lands themselves; which was a natural consequence of the feudal principles, which prohibited the alienation, and of course the encumbering of the fief with the debts of the owner. And when the restriction of the alienation began to wear away, the consequence still continued; and no creditor could take the possession of lands, but only levy the growing profits: so that if the defendant aliened his lands, the plaintiff was ousted of his remedy. The statute granted this writ (called an *elegit*) because it is in the *choice* or *election* of the plaintiff whether he will sue out this writ, or one of the former, by which the defendant's goods and chattels are not sold, but only appraised; and all of them (*except oxen and beasts of the plough*) are delivered to the plaintiff, at such reasonable appraisement and price, in part of satisfaction of his debt. If the goods are not sufficient, then the moiety, or one half of his freehold lands, which he had at the time of the judgment given (*u*), whether held in his own name, or by any other in trust for him, are also to be delivered to the plaintiff, to hold out of the rents and profits thereof the debt to be levied, or till the defendant's interest be expired; as till the death of the defendant, if he be tenant for life or in tail. Copyhold lands are not liable to be taken in execution upon a judgment (*x*). But in case of a debt to the king, it appears by *Magna Charta*, c. 8, that it was allowed by the common law for him to take possession of the lands till the debt was paid. For he, being the *grand superior* and *ultimate proprietor* of all landed estates, might seize the lands into his own hands if any thing was owing from the vassal; and could not be said to be defrauded of his services when the ouster of the vassal proceeded from his own command. This execution or seizing of lands by *elegit* is of so high a nature that after it the body of the defendant cannot be taken; but if execution can only be had of the goods, because there are no lands, and such goods are not sufficient to pay the debt, a *capias ad satisfaciendum* may then be had

(*u*) 2 Inst. 395.

(*x*) 1 Roll. Abr. 888.

after the *elegit*; for such *elegit* is in this case no more in effect than a *feri facias* (y). So that body and goods may be taken in execution, or land and goods, but not body and land too, upon any judgment between subject and subject, in the course of the common law. But where a party was taken into custody, and also more goods than sufficient to cover his demand, the court ordered him to be liberated. The sheriff, having property once in his hands, returning it to the defendant, becomes responsible (z). The election cannot be complete unless the plaintiff has some benefit from the land (a).

If no land then a *ca. sa.* may be had.

Body and goods may be taken, but not body and land too.

The statute ordains,

13 Ed. 1. c. 18.

“That where a debt is recovered or acknowledged in the king’s court, or damages awarded, it shall be in the election of him that sueth to have a *feri facias* unto the sheriff to levy the debt upon the lands and chattels of the debtor, or that the sheriff shall deliver to him all the chattels of the debtor (saving his oxen and beasts of his his plough), and the one-half of the land, until the debt be levied upon a reasonable extent; and if he be put out of the land, he shall recover it again by writ of *novel seisin*, and after that by writ of *re-disseisin*, if need be.”

He that recovers a debt may have a *fi. fa.* or *elegit*.

By force of this writ, the sheriff may take in execution, and deliver unto the party plaintiff, the one half of all the lands, tenements and rents of the debtor, at a reasonable extent, and all his goods and chattels, (*except his oxen and beasts of his plough*) until the debt be levied upon a reasonable price or extent (b).

Sheriff may take in execution and deliver one moiety of all lands.

By this writ two things are to be done :

“1st. The goods and chattels of the defendant are delivered to the plaintiff.

Two things to be observed.

“2d. The moiety of the lands and tenements.”

And this must be done by inquest taken by the sheriff; for the valuation of the goods and lands ought to be first found by the inquisition of a jury, and the goods and chattels are delivered by a reasonable price, as the lands are by a reasonable extent; but terms for years, which are chattels real, and an interest out of lands and tenements, may be delivered as chattel by reasonable price, or as profit out of lands by reasonable extent: and hence, if a term for years be extended and valued at a certain value in

Must be done by inquest.

Terms for years, and interest out of lands, may be delivered as a chattel by reasonable price.

(y) Hob. 58.

(a) 1 Str. 226.

(z) R. in aid, &c. v. Kinnear, 3

(b) 3 Co. 12. a.

Pr. 536.

gross, and delivered, and the debt is more than levied out of the profits of other lands, and of the term, yet he shall not account for the profits of the term, nor deliver up the same, because he had it at a stated price by the *elegit*, and the lands and tenements were only for the remainder of the debt, and therefore the profit of them will only go towards satisfying such remainder; and for these last profits only the plaintiff shall be answerable (c). Therefore, some of the books say that a chattel, or a term for years, may be sold, which is true in one sense, *viz.* that they may be sold to the plaintiff for the price settled by the jury; and if the defendant tenders the money to the sheriff before delivery, or to the court before the actual delivery by the sheriff, such goods are saved; and if afterwards delivered, he shall be entitled to his *auditâ querela* (d). But if there is no tender made, the property of the goods is altered by the delivery of the sheriff, and the plaintiff may dispose of them under the judgment.

Some of the books say, a chattel or term for years may be sold.

The *elegit* as to goods not a *fi. fa.*

Sheriff and jury may go to the house, &c. and value.

The *elegit* as to goods is not a *fi. fa.*, for a *fi. fa.* is executed by sale, but the *elegit* by appraisement of the jury, and delivery to the party (e). And the sheriff and jury may go to the house or ground to be extended, or where the goods are, and there appraise and value the same (f). They may go into the same house or ground for that purpose *if the doors or gates be open*, but *may not break open the gates or doors* (g).

Extent and valuation must be by 12 men.

Bailiff of a liberty may execute this writ.

The extent and valuation of the lands, and the appraising of the goods, must be by an inquest, by the oath of twelve honest and lawful men, and not by the sheriff himself (h): and a bailiff of a liberty may execute this writ within the equity of the statute; that is, such a bailiff as has the execution and return of writs (i), and he may deliver the moieties.

Sheriff is to impanel a jury to inquire of the goods, and also lands.

Upon an *elegit* the sheriff is to impanel a jury, who are to make inquiry of all the goods and chattels of the debtor, and to appraise the same, and also to inquire as to his lands and tenements; and, upon such inquisition, the sheriff is to deliver all the goods and chattels, (*except oxen and beasts of the plough*), and a moiety of the lands, to the party, and return his writ, in order to record his

(c) Cro. El. 584. Hob. 58.

(d) Moor, 873. pl. 1216.

(e) 1 Sid. 104. 1 Lev. 92. 1 Rep. 65.

Kebl. 105.

(f) 5 Co. 91.

(g) Dalt. 134.

(h) 4 Co. 74. 2 Bulstr. 97. 4

(i) Cro. Car. 319.

inquisition in that court out of which the *elegit* issued; for it cannot be done by the sheriff without an inquest, because the words of the statute are by *reasonable price and extent*, which must be found such by the oaths of twelve men (*k*).

Cannot be done without inquest.

No notice is given of executing an *elegit*.

Although the creditor takes out an *elegit*, yet if it appears to the sheriff that there are goods and chattels sufficient of the debtor to satisfy the debt, he ought not to extend the lands (*l*).

If goods sufficient, ought not to extend lands.

When the jury have found the seisin and value of the land, the sheriff, and not the jury, is to set out and deliver a moiety thereof to the plaintiff by *metes and bounds* (*m*). But the jury need not divide it (*n*).

When the jury have found the seisin, a moiety to be delivered.

The sheriff is not bound to deliver a moiety of each particular tenement and farm, but only certain tenements making in value *a moiety of the whole* (*o*). It is agreed that the moiety extended must be set out by *metes and bounds* (*p*).

Not bound to deliver a moiety of a particular tenement and farm.

The inquisition ought to find the lands with *certainty*, and ought to show the *place* and *county* where the inquisition is taken, and where the lands lie (*q*), describing the lands with *convenient* certainty (*r*). If no lands are returned, the sheriff need not return an inquisition (*s*). The sheriff, on the inquisition, shall deliver the moiety described with certainty (*t*), described by metes and bounds distinctly (*u*). He ought to deliver a moiety only, for if he delivers more it would be void for the whole (*v*). And if the defendant be joint tenant, or tenant in common, it ought to be specially mentioned in the return (*x*). If there are divers conusors, a moiety of the lands of all (*y*).

What inquisition ought to find.

Deliver moiety with certainty.

Moiety only to be delivered.

Joint tenant.

If divers conusors.

If the defendant has aliened after judgment, a moiety of the land in the hands of the purchaser, as well as of the defendant (*z*).

If land aliened after the judgment,

(*k*) 2 Inst. 396. Co. Lit. 389.
Dyer, 100. 5 Co. 74.

(*r*) Moor, 8. Com. Dig. tit.
Exec. (C. 14).

(*l*) 3 Inst. 395.

(*s*) Str. 874.

(*m*) Ib.

(*t*) 1 Vent. 259.

(*n*) Cro. Car. 319.

(*u*) 1 Brownl. 38. Hut. 16.

(*o*) Salk. 563. 1 Sid. 91. Cro.
Car. 319.

(*v*) 1 Sid. 91. 239.

(*p*) Den. v. E. of Abingdon,
Doug. 473. Dalt. 135. S. P.

(*x*) Hut. 16. Brownl. 38.

(*q*) Dyer, 208. b.

(*y*) 2 Inst. 396.

(*z*) Ib.

If lands lie in several vills.

If the lands lie in several *vills*, a moiety of the land in all, and not the whole in one *vill* (*a*).

To deliver one half of all houses, lands, &c.

The sheriff is to deliver one half (by metes and bounds) of all houses, lands, meadows and pastures, rents, reversions and hereditaments, wherein the defendant had any sole estate in fee, or for life, into whose hands the same do afterwards come; but not of a right only to land, an annuity, copyhold lands, &c. (*b*).

Sale or extent of a lease.

On inquisition of a lease, which is but a chattel, the sheriff may sell it as goods; but if he extends it, there shall be no other benefit than as of a common extent (*c*).

If extended.

If it be extended, the plaintiff is accountable for all the profits he receives out of the term upon such extent; and if he receives the debt out of such term before it expires, the defendant shall be restored to the term itself (*d*); but otherwise he shall keep the term, and not account for the profits of it.

Actual possession cannot be delivered.

Actual possession cannot be delivered on an *elegit*, for the sheriff ought only to deliver seizure, to enable the plaintiff to maintain an ejectment, and the tenant may plead thereto, otherwise the tenant would be turned out unheard, and be remediless (*e*).

What Estates may be extended.

What estates are extendible.

A term for years (*f*). Lands which defendant has by extent, upon a statute-merchant, &c. (*g*). So all tene-ments, as well as land of the defendant, as a rent, &c. (*h*), in ancient demesne (*i*); in reversion (*k*). So two thirds of a rent may be extended, though the defendant has the whole (*l*). Lands before in execution upon a statute (*m*).

c. 3. s. 10.

So now by 25 *Car. 2*,

Lands liable freed from incumbrances of *cestui que trust*.

“ It shall be lawful for every sheriff or other officer to
“ whom any writ of precept shall be directed, upon any
“ judgment, statute or recognizance, to do execution of all
“ such land, tithes and hereditaments, as any other persons
“ be seised or possessed of in trust for him against whom
“ execution is sued, as if the party against whom execution

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|--------------------------------|--------------------------------|
| (a) 1 Lev. 160. | (f) 2 Inst. 396. |
| (b) Dyer, 206. 7 Rep. 49. | (g) 1 Roll. 887. 1. 12. 3 Lev. |
| Plowd 224. 13 Ed. 1. c. 18. | 113. Mod. 36. |
| (c) 1 Brownl. 38. | (h) Bro. Eleg. 13. Mod. 32. |
| (d) Gilb. Exec. 35. 5 Co. 706. | (i) 5 Co. 105. |
| 896. Leon. 95. | (k) Gilb. Exec. 40. |
| (e) 8 Keb. 243. 2 Eq. C. Ab. | (l) Cro. El. 742. |
| 381. 3 T. R. 295. | (m) 1 Co. 65. b. |

“ shall be sued had been seised of such lands, &c. of such
 “ estate as they be seised of in trust for him at the time of
 “ the execution sued, which lands, &c. shall be accordingly
 “ held freed from all incumbrances of such persons seised
 “ or possessed in trust.”

Where a term was created in trust for the debtor, until default made in the payment of an annuity, to secure which the term was created, held that it was not a term held in trust for the debtor within the statute (*n*).

What cannot be extended.

But upon an *elegit* the sheriff cannot extend a copyhold (*o*); because the freehold is in the lord. Nor a term for years of a copyhold made by the license of the lord (*p*). Nor lands of which the defendant is disseised, whilst they are in possession of the disseisor (*q*). Nor, since the statute 29 *Car.* 2, lands which the trustee has aliened before execution, for they are not bound by the judgment (*r*). Nor the land of a villein upon an *elegit* against the lord, for it is the land of the villein till the lord seizes it (*s*). Nor a tencement which cannot be granted over, as the office of filazer, for it is an office of trust (*t*). So a bare rent-seek cannot be extended (*u*); nor does it lie of the glebe land of a parson or vicar, no more than of a churchyard, for these are each *solum Deo consecratum* (*x*). An *advowson* in gross cannot be extended on an *elegit*, because a moiety cannot be set out by the sheriff, nor can it be valued at any certain sum towards payment of the rent (*y*).

What cannot
be extended.

Entailed lands in the hands of the heir are not extendible, neither by *statute* nor *elegit* (*z*).

Entailed lands
in the hands of
the heir.

A. had judgment against *J. S.* in debt, 3 *Jac.*; and *B.* had judgment in debt against *J. S.* 4 *Jac.*; *A.* 10 *Jac.* had an *elegit*, and the sheriff delivered a moiety of the lands, but did not return his writ; and thereupon *B.* endeavoured to have an *elegit* upon his judgment, and to turn *A.* out of possession; but *per Coke*—If *B.* should turn *J. S.* out of possession, *A.* may have a new *elegit*, because his judgment is prior to the other (*a*).

Priority of
judgment.

(*n*) Doe v. Greenhill, 4 B. & A. 681.

(*o*) 1 Roll. 888. l. 1.

(*p*) Ib. l. 3.

(*q*) Ib. l. 7.

(*r*) Com. 227.

(*s*) Ib. l. 20.

(*t*) Dy. 7. 6.

(*u*) Cro. El. 66.

(*x*) Jenk. 207. 3 B & P. 327.

(*y*) Gilb. Exec. 39.

(*z*) Cro. Jac. 85.

(*a*) Biete v. Foster, Roll. Rep. 77.

pl. 18.

An *elegit* executed after a claim by extent, the judgment a better title.

If a *fi. fa.* and *elegit*.

If the land be first extended on a statute, and after *elegit* obtained before acknowledgment of the statute.

How to deliver, where there are two manors.
So of two acres.

An *elegit* executed, and a claim by extent on a statute acknowledged in the same term, but before the judgment was given. The reporter says, he heard that it was adjudged that the plaintiff had the better title, being in possession under a judgment (b).

If a *fi. fa.* and *elegit* be delivered at same time with an extent, at a common person's suit, the *fi. fa.* and *elegit* shall take place, because the goods shall be attendant to satisfy, in the first place, the judgment of the superior court (c).

If the land be first extended upon a statute, and afterwards an *elegit* upon a judgment, obtained before the acknowledging of the statute, comes also to the sheriff, the moiety of the land extended shall be delivered to the plaintiff upon the judgment (d).

Elegit issued against him who had two manors, the sheriff may deliver the one manor to the plaintiff, in the name of the moiety of all, and is not bound to deliver the moiety of every manor (e). So of two acres; and this seems to be *where they are of equal value*.

If Judgment be Reversed.

If error brought, and judgment reversed, the goods in specie to be restored, and not the value.

If a writ of error be brought, and the judgment reversed, the goods in *specie* shall be restored, and not the value; but upon a *fieri facias*, the value, and not the goods in *specie*: and the reason of the difference is, that on the *fieri facias* the sheriff is to sell to any buyer, but in the *elegit* he is only to deliver it to the plaintiff; therefore, when the writ of error has reversed the judgment, in the one case the defendant is restored to the money, in the other to the goods themselves: for he is to be restored to what he has lost by the writ as it was awarded, which, in the case of a *fieri facias*, was the money, but in the *elegit*, the goods themselves, delivered over to the plaintiff (f).

On the second *elegit*, the sheriff can only deliver a moiety of the moiety left.

Two persons recovered severally against one in debt; he who had the first judgment sued first an *elegit*, and had the moiety of the land delivered in execution, after the other sued the *elegit*; and the sheriff prayed the advice of the court. *Per Cur.*—He shall deliver the moiety of that

(b) Gerrard v. Norris, Latch, 53.

(c) Brook, 97.

(d) 1 Brownl. 38.

(e) Bro. Eleg. pl. 11.

(f) Roll. Abr. 778. Godb. 27.

2 Lev. 92. pl. 115. 5 Co. 90.

Moor, 573. pl. 788. Yelv. 179.

Cro. Jac. 216, 217.

moiety which he had at the time of the writ awarded (*g*). Yet if both judgments are of the same term, each may take a moiety of the whole.

The sheriff cannot deliver a lease upon an *elegit* at another value than what the jury had found it at; and the sale made by him is as good as if made in market overt (*h*). Cannot deliver a lease at another value than what is found.

After Inquisition taken.

After the inquisition is taken by the sheriff it shall be returned and filed (*i*). And after it is filed, it shall not be avoided upon surmise that more is extended than a moiety (*k*); or that it was extended at a small value. And though the extent was at an under value, the plaintiff shall account only for the value at which the extent is (*l*). After inquisition taken it is to be filed.

But before the inquisition filed, the court may examine it, and if they find fraud, partiality, &c., may stop the filing, and award a new *elegit* (*m*). But before inquisition filed, court may examine it, and stop filing.

Sheriff's Charge to the Jury.

“Your charge is to inquire what goods and chattels, (except the oxen and beasts of the plough,) and also what lands and tenements *C. D.* hath or had, or is or was seised of in the bailiwick of the sheriff of ———, on ————, in the ——— year of His Majesty's reign, or any time since; and also to inquire and say what is one moiety of all the said lands and tenements, that the same may, at a reasonable price and extent to be made, be delivered to *A. B.* to hold as his own proper goods and chattels: and also to hold the said moiety of the said lands and tenements to the said *A. B.* and his assigns, as his free tenements, according to the form of the statute,” &c. Charge to the jury.

Execution, in real or mixed Actions.

IF the plaintiff recovers in an action, real or mixed, wherein the seisin or possession of land is awarded to him, the writ of execution shall be an *habere facias seisinam*, or writ of seisin of a freehold; or an *habere facias possessionem*, or writ of possession of a chattel interest (*n*). If plaintiff recovers in a real or mixed action, he is to have execution awarded to him, *habere facias seisinam* of a

freehold, and *habere facias possessionem* of a chattel interest.

(*g*) Cro. El. 482. Dalt. 532.

(*h*) Brownl. 38, 39.

(*i*) Dyer, 100.

(*k*) 2 Inst. 396.

(*l*) 2 Ch. Ca. 183.

(*m*) 2 Inst. 396.

(*n*) Finch, 470.

When the judgment was extended to the recovery of a term in ejectment, gave birth to the *hab. fac. poss.*

When the judgment in ejectment was extended to a recovery of the term itself (the judgment originally being only for damages), it of consequence gave birth to the *hab. fa. poss.* in ejectment. In real actions, where the freehold was recovered, the demandant had execution by the writ of *hab. fa. seis.*; in ejectment, therefore, it was but just that a remedy similar should be permitted to the plaintiff, who, as he now had judgment to recover possession of the land, might put the sentence of the law in execution by virtue of the *hab. fa. poss.* (*o*).

May take *posse comitatus*.

These are writs directed to the sheriff of the county, commanding him to give actual possession to the plaintiff of the land so recovered: if he be denied entrance by the tenant, he may break open the door, and take with him the *posse comitatus* if he meet with resistance (*p*). Also he may remove all persons in the house, and ought so to do (*q*). But if it be peaceably yielded up, the delivery of a twig, a turf, or the ring of the door, in the name of seisin, is sufficient execution of the writ (*r*); the end of the writ being to give the party full and actual possession; consequently the sheriff must have all power necessary for this end: besides, in this case, the law does not, after the judgment, look upon the house as belonging to the tenant, but to him who has recovered (*s*).

Sheriff on *hab. fac. seis.* ought to execute the writ, although a stranger be seised of the land.

The sheriff, upon the *hab. fa. seis.*, may and ought to execute the writ, although that indeed a stranger be seised of the land, and that neither of the parties to the writ were ever seised thereof (*t*).

Where a common recovery is had of several houses, the sheriff may deliver possession in one in the name of all. But it is otherwise in ejectment.

If a common recovery be had of divers messuages, the sheriff, upon the writ of execution, may make execution in one of them in the name of all, without going to every one in particular; but if a man is to be put in execution of divers messuages upon a writ of execution, and the houses are in the possession of several men, he ought to go to every house particularly, and to deliver seisin thereof; for delivery of seisin in one in the name of all, when they are in several men's possession, is not sufficient; because the possession of one tenant is not the possession of the other, but each hath his several possession.

(<i>o</i>) Gilb. Ej. 148.	(<i>r</i>) Br. Redis. 5. Perk. 42.
(<i>p</i>) Dalt. Sh. 256, 350. Fitz.	(<i>s</i>) 5 Co. 91.
Exec. 247. 5 Co. 91.	(<i>t</i>) Plowd. 12, 13.
(<i>q</i>) 1 Lev. 115.	

But it seems that if all the messuages had been in possession of one tenant, it had been sufficient to give possession of one in the name of all (*u*).

But the surest and best way is for the sheriff to remove all the tenants entirely out of each house, and when the possession is quitted to deliver it up to the plaintiff.

If a man, upon an ejectment for forty acres of land, recovers thirty, and not the residue, upon the *habere fac. poss.* the sheriff may deliver him three or more of the acres in the name of the whole, without dividing of it by metes and bounds, though the plaintiff has not recovered all the acres whereof he has brought his action, and of which he has supposed the defendant tenant (*x*).

If an *hab. fac. poss.* go to the sheriff to put a man in possession of twenty acres of land, the sheriff ought to give him twenty acres in quantity according to the custom of the country where this is, and not according to the statute (*y*).

If a man recover rent or common, whereupon a writ of possession issues out, and the sheriff comes upon the land, and delivers seisin of the rent or common by word only, this is well done, and the recoveror is in actual possession by it (*z*).

If there is a recovery of a house, sheriff may put the party in possession by delivering to him the ring of the door of the house, or may open the door, and bid him enter and take possession (*a*).

If the sheriff thrusts out all persons he can find in the house, and gives the plaintiff, as he thinks, quiet possession, and after the sheriff is gone there appears some persons to be lurking in the house, this is no good execution, and therefore the plaintiff shall have a new *hab. fac. poss.* because he never had execution (*b*). But, if not returnable, why not re-execute the writ?

Where the recovery is of land, and there was more demanded than recovered, as suppose the demand had been for 500 acres, and a verdict and judgment only for 100 acres, it is not sufficient to give possession of one acre in the name of the whole that are recovered, but he

Surest way.

Land may be delivered in execution without setting forth the metes and bounds.

If writ be for 20 acres, so much by estimation of the country must be delivered.

Upon recovery of rent or common, the sheriff may deliver possession by word only.

If sheriff thrust out all he can find, and after he is gone some persons lurking in the house left, may re-execute.

Where the recovery is of land, and of more than demanded by 500 acres, it is sufficient to give possession

(*u*) 1 Roll. Ab. 886. Roll. R. 421.

(*x*) Trin. 15 Jac. B. R. adjudged. 10 V. 539.

(*y*) Floyd v. Bethel, Roll. Rep. 420. Bridg. 56.

(*z*) Ib. Br. Seis. pl. 36. 2 Ass. 24.

(*a*) Park, R. 43.

(*b*) 1 Leon. 145.

of 3 acres in the name of the whole. must set forth all the acres in particular, so that the recoverers shall have the benefit of the judgment by certainty, and the several profits, without interruption or disturbance (*c*).

If defendant dies before execution. If the defendant dies before the execution, it may be done against his heir; for, in ejectment, the ejector by intendment is a disseisor (*d*).

If tested before lessor dies, sufficient. If tested before lessor or plaintiff's death, though not sued out till after it, it is regular (*e*).

If judgment for five-eighths, and sheriff gives possession of the whole. If, on a judgment in ejectment for five-eighths of a cottage, the sheriff gives possession of the whole, the court will make a rule on sheriff and the lessor of plaintiff to restore possession of three-eighths to the tenant (*f*).

When possession complete. Until the bailiffs are withdrawn, and possession completely given, the execution is not complete (*g*).

If recovery of a rent, how to put party in possession. If the recovery be of rent, the sheriff may put the party in seisin thereof, by the corn or grass growing on the land out of which the rent is issuing, or by the twig or bough of a tree growing upon the same land, or by distress of cattle *levant* and *couchant* upon the same land, or by a clod of the same land: and this is a good seisin of the rent, notwithstanding that the day of payment of the rent be not then come.

Sheriff not bound to know or seek the land. The sheriff is not bound to know or seek the land demanded; and, therefore, except the demandant show it to him, he may make his return accordingly (*h*).

If sheriff gives possession, and he is ejected after. If the sheriff gives possession to the party, and the other ejects him presently, the sheriff may restore him to the possession notwithstanding his former execution, because he ought to leave him in a peaceable and quiet possession (*i*).

When an attachment. So if, in a short time after, defendant turn plaintiff out of possession, it is a disturbance, and an attachment will go (*k*).

If a recovery in three towns, how sheriff to give possession. If a man recovers land in three towns, and hath a writ of execution awarded to the sheriff, the sheriff may deliver him possession of the land in one town in the name

(*c*) *Molineux v. Fulgam*, Palm. 289.

(*d*) 1 Roll. 887. l. 10.

(*e*) 4 Burr. 1970.

(*f*) *Roe v. Dawson*, 3 Wils. 49.

(*g*) 1 Salk. 321. 1 Lev. 145. 6 Mod. 115.

(*h*) Dalt. 255.

(*i*) *Molineux v. Fulgam*, Palm. 289.

(*k*) 6 Mod. 27. Sty. 277.

of the land, and it is a good execution for all the lands recovered in all the three several towns (*l*).

In ejectment the old rule was, that there ought to be a sufficient certainty specified in the writ, that the sheriff may know how to deliver possession. But, since the case in *Saville* 28, that doctrine is exploded, for the plaintiff is to *show the sheriff*, and take possession at his peril of only what he has title to. If he takes more, the court will, in a summary way, set it right (*m*). The sheriff delivers possession at the showing of the plaintiff (*n*).

The sheriff is to be shown the premises, and plaintiff to take possession at his peril.

It is said, if the demandant shall show to the sheriff a stranger's land, by force whereof the sheriff enters, &c., yet he is no trespasser (*o*).

If shown a stranger's land.

If the sheriff duly execute the writ, and the plaintiff or demandant have his demand, there, though the sheriff returns not the writ, it is not material (*p*); that is, if he be not called on by rule of court.

When need not return writ.

If the officer be disturbed in the execution of the writ, on an affidavit, the court will grant an attachment against the party, whether he be the defendant or a stranger; because the writ is the process of the court, and any disturbance given to the execution of it is a contempt to the authority of the court from whence it issues, and as such will be punished by the court (*q*).

If disturbed in the execution an attachment will be granted.

For poundage on this writ, see title *Sheriff's Fees*, *infra*.

Sheriff's Fees.

AT common law, no fees whatever were allowed to sheriffs (*r*). Nor can he claim by any usage beyond the fees given by the statute upon warrants executed by him (*s*). But this, instead of being advantageous to the subject, proved only oppressive, and opened the door to extortion: therefore the legislature found it necessary to interfere, and regulate the demands of sheriffs, by appointing certain fixed sums to be taken in cases of execution. 23 H. 6. s. 9.

(*l*) Dalt. 256. Per. Cur. C. B.
31 El.

(*m*) Cottingham v. King, 1 Burr.
629.

(*n*) Conner v. West, 5 Burr. 2673. 562.

(*o*) Keilw. 119, 120. Dalt. 257.

(*p*) Dalt. 179. 256.

(*q*) Mod. Cases, 27.

(*r*) 10 Mod. 139.

(*s*) Dew v. Parsons, 2 B. & A.

c. 4.

The sheriff not to receive more than 12*d.* for every 20*s.* where the sum does not exceed 100*l.*, and 6*d.* for every 20*s.* above that sum.

Not to extend to executions within any city.

A right is given to the sheriff to demand the fees mentioned in the act, and he may bring debt for them.

That he shall have 1*s.* for the first 100*l.* and 6*d.* for every other 100*l.*

By the 29 *Eliz.* it is enacted,

“ That it shall not be lawful to or for any sheriff, under-sheriff, bailiff, or franchises or liberties, nor for any of their or either of their officers, ministers, servants, bailiffs or deputies, nor for any of them, by reason or colour of their or either of their office, to have, receive or take of any person whatsoever, directly or indirectly, for the serving and executing of any *extent* or *execution* upon the *body, lands, goods* or *chattels* of any person whatsoever, more or other consideration or recompense than in this present act is and shall be limited and appointed, which shall be lawful to be had, received and taken; (that is to say) 1*s.* of and for every 20*s.* where the sum exceedeth not 100*l.*, and 6*d.* of and for every 20*s.* being over and above the said sum of 100*l.*, that he or they shall so levy or extend, and *deliver in execution*, or take the body in execution for, by virtue and force of any such extent of execution whatsoever; upon pain and penalty that all and every sheriff, &c., their and every of their ministers, &c., which at any time shall directly or indirectly do the contrary, shall lose and forfeit to the party grieved his treble damages, and shall forfeit the sum of 40*l.* for every time that he, they or any of them shall do the contrary; the one moiety thereof to our sovereign lady the queen, her heirs and successors, and the other moiety thereof to the party or parties that will sue for the same, by any plaint, &c. wherein no essoign, wager of law, or protection shall be allowed.

“ Provided always, that this act, or any thing therein contained, shall not extend to any fees to be taken or had for any execution within any *city or town corporate*.”

In the construction of this statute the following points have been holden :

1st. That though the words of the statute are, that it shall not be lawful for the sheriff to take any more or greater fee than by the act is limited, &c., that herein, by implication at least, if not by express words, a right is given the sheriff to demand those fees mentioned in the statute; and consequently that he may, as in all cases where a statute creates a debt or duty, maintain an action of debt for them (*t*).

2d. It hath been adjudged, that the sheriff shall have 12*d.* for every 20*s.* of the first 100*l.*, and 6*d.* for every 20*s.* for the residue (*u*).

(*t*) *Probey v. Lumley*, Moor, 853. (*u*) *Cro. El.* 335. *Lister v. Brompl.* 1166. *Latch*, 19. *Poph.* 175. *Iley*, *Cro. Car.* 286. *Palm.* 400. *Salk.* 331.

3d. It hath been resolved, on the proviso of the said statute, that it shall not extend to any fees to be taken for any execution within any *city* or *town corporate*: that this must be intended of executions on judgments given in those courts; and that therefore where a sheriff executes a judgment given in *Westminster Hall*, in a *city* or *town corporate*, he is as much entitled to his fees, pursuant to this statute, as if the execution had been done in any part of the country at large; for herein the sheriff runs as great a risk, and his trouble is as great; but where both the judgment and execution are within a limited jurisdiction, it cannot be presumed to be attended with equal difficulty, and therefore the proviso in the statute excludes them (*x*). But the action on this statute can only be brought by the sheriff (*y*).

That the proviso shall not extend to any fees taken for execution within any city, and on judgments in those courts only.

4th. It hath been resolved, that the *bailiff of a liberty*, who executes an execution on a judgment given in *Westminster Hall*, is entitled to the fees within the words and meaning of the statute, and not the sheriff of the county, who directs his precept to him (*z*).

Bailiff of a liberty who executes an execution entitled to the fees.

5th. It seems agreed, that if a sheriff makes an *extent*, and before the *liberate* a new sheriff is chosen, the new sheriff shall have the fees appointed by the statute (*a*).

6th. It hath been resolved, that the statute does not extend to real executions, such as *habere facias seisinam*, or *possessionem*, but only to executions in personal actions: also, it is said, that the statute does not extend to executions upon statutes-merchant, recognizances, &c., and that the act is to be understood of cases where the judgment *redditur in invitum*, and not by the voluntary confession of the party (*b*).

Statute does not extend to real executions, but to executions in personal actions. Nor on statutes merchant, &c.

7th. That for executing a *cap. utlag.*, or for a warrant to execute it, or for a return of it, no fee is due to the sheriff, because this is at the suit of the king (*c*).

No fee due on executing a *capias utlagatum* by this act.

8th. It has been resolved, that if one in execution die, and a *fi. fa.* issue against his goods, the sheriff shall have his fees upon executing the *fieri facias*, for his trouble was as great as at the first (*d*).

On a *ca. sa.* sheriff to have his fees for the whole debt, 3 Geo. 1. c. 15. s. 17.

(*x*) Latch, 17, 18. Poph. 173. Palm. 399, 400. Dalt. 527. Cro.

(*a*) Winch, 50, 51. Dalt. 526.

(*b*) But *qu.* Salk. 331.

El. 263. 5 Mod. 97. Salk. 331.

(*y*) 2 T. R. 155.

(*z*) Latch, 19, 52. Salk. 331.

pl. 4. Dalt. 526.

(*c*) Het. 52. 2 Brownl. 283.

Graham v. Gill, 2 M. & S. 294.

(*d*) Salk. 331. p. 6.

Statute is called 29 Eliz., but is 28 Eliz.

In the printed statute the 28 *El.* is called 29 *El.*, but by the parliament roll it is the 28th, and so ought to be recited (*e*). The action is brought as upon the 29 *Eliz.*, and held well (*f*).

Extortion to take fees before due.

It is extortion for an officer to take his fee before it is due; and therefore, where an under-sheriff refused to execute a *ca sa.* till he had his fees, the court held that the plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indict him for extortion (*g*). And *vide infra* 161.

Debt brought for fees for executing an *elegit*, verdict for plaintiff.

An action of debt was brought by the sheriff upon the 29 *El.* for his fees for executing an *elegit*, and upon *nil debet* pleaded, there was a verdict for the plaintiff.

No reason why he should not have fees for an *elegit*.

Holt, C. J., said, that there was no reason why the sheriff should not have fees as well for executing an *elegit* as an extent upon a statute. Upon the writ of *elegit*, the sheriff returns that he has taken an inquisition, and extended the defendant's land, and delivered it to the plaintiff. And there is a *liberate* in the body of the writ of *elegit*; otherwise, in case of an extent upon a statute, there must be a *liberate*. And in case of the *elegit*, upon the return of delivery, the plaintiff may enter; and he can do no more in case of a statute after a *liberate* executed, for he must not enter by force. The return of *liberari feci* is a full execution of the writ of *elegit*, and by that the plaintiff becomes tenant by *elegit*, and may maintain an ejectment; and he may enter and assign his interest upon the land, and the assignment will be good. For the defendant's continuing in possession after the return of the writ turns the plaintiff's estate to a right, and therefore he must enter before he can assign it over.

There is a *liberate* in the execution.

Upon return, plaintiff may enter.

The return of *liberari feci* a full execution of the writ, and the plaintiff becomes tenant by *elegit*.

The act to be carried to extents on *elegit*.

Powell, J., said, that the like was adjudged in the C. Pl. while he sat there; that all the objections that are here made to the action, were made there, and overruled; that the court there resolved, that the statute of *El.* mentioning extents, that should not be confined to extents upon statutes only, but should be carried to extents upon *elegit*; especially when they were both equally liable to the same exceptions; and therefore he

(*e*) Salk. 331. pl. 4. Skin. 363.

pl. 7. 2 T. R. K. B. 148.

(*f*) 2 Bl. R. 1103.

(*g*) Co. Litt. 36S. Salk. 330. pl. 3. 335. pl. 5.

was of opinion that the sheriff should have his fees for executing an *elegit*. The other two judges agreed (*h*).

The objections are, that no fees were due, consequently no action lay; and where the lands lie in several counties, a man may pay more in fees than his debt. The objections.

For ascertaining the fees for executing writs of *elegit*, so far as the same relate to the extending of real estates, and for ascertaining the fees for executing of writs of *habere facias possessionem aut seisinam*, the 3 *G.* 1.

c. 15. s. 16.

“That from and after the last day of *Mich.* 1717, it shall not be lawful for any sheriff, &c. by reason or colour of their executing of any writ or writs of *habere facias possessionem aut seisinam*, to demand, ask or receive any other or greater consideration, fee, gratuity or reward than is hereafter mentioned, (which shall be lawful to be demanded and taken,) that is to say, the sum of 1*s.* for every 20*s.* of the yearly value of any manors, messuage, lands, &c. whereof possession or seisin shall be by them or any of them given, where the whole exceedeth not the yearly value of 100*l.*, and the sum of 6*d.* for every 20*s.* *per annum* over and above the said yearly value of 100*l.*”

Fees for executing an *habere facias possessionem, aut seisinam*, by 3 *Geo.* 1. c. 15. s. 16.

But this statute applies only between party and party, and not as between attorney and client (*i*).

If an erroneous execution be delivered to the sheriff, and he executes it, yet he shall have his fees. This means, if he *deliver* the money over to the plaintiff, for the sheriff has done his duty; but otherwise if execution set aside (*k*).

If erroneous execution be executed.

If the sheriff levy, he is entitled to poundage, though the parties compromise before he sells any of the defendant's goods. And that after such compromise, neither party ought to rule the sheriff to return the writ, if he do, the court will discharge such rule with costs (*l*). So he may maintain debt for his poundage where, after a levy and receipt of money under a *fi. fa.*, the judgment and execution is set aside for irregularity, and the money ordered to be returned (*m*).

Though parties compromise, he is entitled to fees.

The word “charges” in 43 *G.* 3. empowers the sheriff to levy poundage even where there has been no *vendi-* c. 99.

(*h*) *Tyson v. Parke*, 2 *L. Raym.* 1212.

(*i*) *Capp v. Johnson*, 7 *Moore* 518; and see now 7 & 8 *Geo.* 4. c. 71.

(*k*) *Salk.* 332; and see *Bullen v. Ansley*, 6 *Esp.* 111. *Tidd.* 1032.

(*l*) *Alchin v. Wells*, 5 *T. R.* 470.

(*m*) *Rawstorne v. Wilkinson*, 4 *M. & S.* 256.

tioni exponas; but the court ordered extra costs received by the agent in the country to be returned (*n*). So the words "expenses of execution" are not confined merely to the costs of the writ, but may include expenses of levying (*o*).

Poundage on
detainer.

If the sheriff, having taken the defendant on one writ, detain him upon another, he is entitled to poundage upon both (*p*).

No poundage on
attachment.

It seems that sheriff is not entitled to poundage on executing a writ of attachment for non-payment of money (*q*).

And may main-
tain *assumpsit* or
debt. Cannot
take a bond.

The sheriff may maintain *assumpsit* upon a promise of payment of his fees: or he may have debt (*r*). But he cannot take a bond for his fees (*s*).

Not to be al-
lowed more than
his poundage
on sale.

Nothing but the poundage can be taken by the sheriff under this statute for levying an execution, therefore it has been adjudged that he cannot be allowed the expense of an auctioneer, or even the levy fee of one guinea; and retaining any sum beyond his poundage, as for expenses, is an indirect receiving from the plaintiff within the statute (*t*). But if the plaintiff choose to have an auction he must defray the expenses out of his own debt, for there is no colour to charge the defendant with it. If the defendant wish to have an auction he must pay for it out of his own pocket, but it makes no part of the sheriff's account. In actions on simple contracts, and judgments for a debt certain, the expense of levying must be paid by the plaintiff, and not the defendant. But if the judgment be for a penalty, the plaintiff has a right to receive the whole of his debt, independent of the expenses of the execution; and if the sheriff overcharge the plaintiff, the plaintiff is the party grieved under the stat. 29 *EL.* (*u*).

Plaintiff is
party grieved.
c. 4.

If an action be brought for the poundage, it must be by the sheriff, and not by his bailiff, for the sheriff is the only known officer to the court: he may employ whom he pleases, but he is answerable *civiliter* for the acts of all those employed by him, but not *criminaliter* for the acts of his bailiff, *i. e.* as by indictment. So that the sheriff is not liable to any corporal punishment; but where it

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| (<i>n</i>) R. v. Collingridge, 3 Pri. 280. | (<i>r</i>) Mo. 468. Cro. El. 654. 1 |
| (<i>o</i>) Rumsey v. Tuffnell, 2 Bing. 255. | Salk. 209, 331. 1 Roll. 598. l. 35. |
| (<i>p</i>) Taylor v. Ward, E. 24 Geo. 3. | (<i>s</i>) Cro. Car. 287. |
| (<i>q</i>) 2 East, 411. | (<i>t</i>) Bucklev. Bewes, 3 B. & Cr. 688. |
| | (<i>u</i>) Woodgate v. Knatchbull, 2 T R. 148. |

rests in damages, he shall make the party a pecuniary satisfaction. And the reason is, because the party who is damnified shall have an ostensible person against whom he can proceed (*u*).

The sheriff is not entitled to poundage upon stamps in the possession of a distributor seized under an extent (*x*).

Two extents were issued against *A.*, and an extent in aid into another county against *B.*, for the same sums; *B.* paid the whole debt. *A.* afterwards repaid some part of the money to *B.* in consequence of an arrangement between them. The sheriff who took the inquisition against *A.* was held not to be entitled to any share of the poundage (*y*); and where he retained the surplus after satisfying the extent, by litigating a claim to poundage, which was disallowed, he was held liable to pay interest (*z*).

Sheriff not entitled to poundage upon stamps in possession of distributor.

Where the whole debt is paid under an extent in aid into another county.

Retainer.

The sheriff may retain his poundage out of the money levied, so out of money levied by a *lev. fa.* on an outlawry, though ordered to be restored on giving security (*a*), and in some cases he may retain, though no actual levy (*b*).

But if he part with goods by agreement with the plaintiff, he cannot afterwards re-seize them in order to secure his poundage (*c*).

Extortion.

Extortion signifies any oppression under colour of right; but in a strict sense, it signifies the taking of money by any officer by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. Extortion is defined to be an illegal charge made by colour of office (*d*).

The 32 *Geo. 2*, gives the court out of which the process issued a summary power of interference, when there has been any extortion or abuse of that process; but where a sheriff's officer sued in another court, upon a promissory note which he had extorted from a suitor, the latter court, upon an application under the statute, held that they clearly had no jurisdiction (*e*).

(*u*) 3 Wils. 316. 2 T. R. 150.

(*x*) 1 Wightw. Rep. 95.

(*y*) *Ib.* 116.

(*z*) *R. v. Villers*, 11 Pri. 575.

(*a*) *R. v. Burrell*, Bunb. 305.

(*b*) *Park. R.* 377.

(*c*) *Goode v. Langley*, 7 B. & Cr. 481.

(*d*) 1 Hawk. P. C. 170. Hutt. 53.

(*e*) *Ex parte Evans*, 2 B. & P. 88. &

supra 158. g.

c. 26.

By the 3 *Ed.* 1,

“ No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth shall yield *twice as much*, and shall be punished at the king's pleasure.”

Escheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whose offices were instituted before the making of this act, are understood (*f*).

By this statute, they can take no more for doing their office than hath since been allowed by authority of parliament (*g*).

And it hath been resolved, that a promise to pay them money for the doing of a thing which the law will not suffer them to take any thing for, is merely void (*h*).

It is not said that he shall take no reward *generally*, but no reward to do his office; therefore a bar fee of 20*d.* taken by the sheriff for every prisoner acquitted is not against the statute (*i*).

But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; for the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses while they are restrained to *known* and *stated fees*, settled by the discretion of the courts, which will not suffer them to be exceeded without a proper resentment (*k*). And vide *Arrest, supra* 76.

Offence at
common law.

And by the
stat.

When liable to
action.

At common law this offence is severely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And the 3 *Ed.* 1. doth add a greater penalty than the common law did give, for hereby the plaintiff shall recover his double damages (*l*).

If it appear by his return that greater fees have been taken for the levy than are allowed, he is also liable to

(*f*) 2 Inst. 209.

(*g*) 2 Inst. 210.

(*h*) 1 Hawk. P. C. 171.

(*i*) Ib. & 2 Inst. 210.

(*k*) 1 Hawk. P. C. 171.

(*l*) 2 Inst. 210.

an action on the statute for treble damages, at the suit of the party grieved (*m*). Treble damages under 29 El. c. 4.

And the statute which regulates the fees on such levy gives him no other claim but for poundage. 29 El. c. 4.

That statute, however, applies only to cases between party and party, and not to crown debts (*n*).

And the plaintiff is entitled to three times the damages found by the jury (*o*).

Escape.

ESCAPE (*escapium*, from the French *eschapper*, i. e. *effugere*, to fly) signifies a violent or privy evasion out of some lawful restraint; as where a person is arrested or imprisoned, and gets away before delivered by due course of law (*p*). Escape derivation of the word *eschapper*.

Escape is also understood to be when any person who, being under lawful arrest, and restrained of his liberty, either violently or privily evades such arrest and restraint, or is suffered to go at large before delivered by due course of law. What it is understood to be.

As to escape in civil cases it seems agreed as a general rule, that wherever a sheriff or other officer hath a person in custody, by virtue of an authority from a court which hath jurisdiction over the matter, that the suffering such a person to go at large is an escape, for he cannot judge of the validity of the process or other proceeding of such court, and therefore cannot take advantage of any errors in them: hence the law allows him, in an action of false imprisonment, to plead such authority, which will excuse him *though it be erroneous*; but if the court hath no jurisdiction of the matter, then all is void, and, consequently, the officer not punishable for suffering a person taken upon such void authority to escape (*q*). Escapes in civil cases, what.

An attachment for non-payment of costs is in the nature of *mesne* process, and if the sheriff have the party in custody at the return of the writ, he is not liable for an escape (*r*).

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| <p>(<i>m</i>) Woodgate v. Knatchbull, 2 T. R. 148.</p> <p>(<i>n</i>) Stevens v. Rothwell, 3 Br & B. 143. Salk. 331.</p> <p>(<i>o</i>) Buckle v. Bewes, 4 B. & Cr. 154.</p> | <p>(<i>p</i>) Staunf. Pl. C. c. 26, 27.</p> <p>(<i>q</i>) Moor. 274. Dyer, 175. Poph. 203. 2 Str. 509. 820. 1181. 2 L. Raym. 1530.</p> <p>(<i>r</i>) Lewis v. Morland, 2 B. & A. 56.</p> |
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The law allows sheriffs to justify under that authority.
But if the court has no jurisdiction, all is void.

If a *ca. sa.* issues after a year and a day, the sheriff, though no *sci. fa.* issued, is liable if defendant escapes.

Upon this distinction it hath been adjudged that if a *ca. sa.* issue after a year and a day, without suing out a *sci. fa.*, this error will not excuse the sheriff in an escape (*s*).

The sheriff may not take advantage of erroneous process.

But though a sheriff may not take advantage of an erroneous process, yet he shall of a *void process*, on which it is no escape to let a prisoner go (*t*).

Cannot be charged with an escape, before he had defendant in actual custody.

The sheriff cannot be charged with an escape before he had the party in *actual custody* by a *legal authority*; and therefore if an officer, having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, here the officer cannot be charged for an escape (*u*).

Sheriff not liable unless party be legally arrested.

In no case shall the sheriff be liable except the person who has escaped has been in *actual custody*; that is, unless legally *arrested by his own officers*, handed over to him in the gaol by the former sheriff, or regularly delivered in custody (*v*).

If in actual custody, and another writ comes, he must detain: or it is an escape.

But if *A.* is arrested, and in the actual custody of the sheriff, and afterwards another writ is delivered to him at the suit of *J. S.*, upon the delivery of the writ, *A.*, by construction of law, is immediately in the sheriff's custody, without an actual arrest; and if he escapes, the plaintiff may declare that he was arrested by virtue of the second writ, which is the operation it has by law, and not according to the fact (*w*). But where the sheriff, not having actually arrested defendant, accepted an undertaking of his attorney, this was held to be *no* escape (*x*).

If no actual arrest, and takes an undertaking, not liable to a detainer.

Bailiff of a liberty bringing a prisoner taken in execution out of his liberty.

Where a bailiff of a liberty, *having return of writs* and *execution* on them, brings a prisoner taken in *execution out of his liberty*, to lodge him in the county gaol, it is an escape, and shall subject the bailiff (*y*).

Undertaking, and no bail put in.

So if a sheriff's officer takes an undertaking without plaintiff's assent, and no bail above put in. And the court will not relieve him by permitting him to put in and justify bail afterwards (*z*). *Vide* title *Bail*, p. 82.

(*s*) Cro. Car. 28. Salk. 273.
But *semb. cont.* Wooden *v.* Moxon,
6 Taunt. 490.

(*t*) Salt. 700.

(*u*) Bro. Escape, 22.

(*v*) 2 Barnes, 259. 3 Co. 71.

(*w*) 5 Co. 89.

(*x*) Hodgson *v.* Akerman, L. Mansfield's Sum. Ass. 1776.

(*y*) Boothman *v.* L. Surrey, 2 T. R. 3. 3 Co. 41.

(*z*) Fuller *v.* Prest, 7 T. R. 109.

For the greater security of creditors, and the better to enable them to prove the actual custody of the prisoner, the 8 & 9 W. 3, enacts,

“That if any one, desiring to charge any one with an action or execution, shall desire to be informed by the marshal or warden, or their respective deputies, or by any other keeper of any other prisoner, whether such person be a prisoner in his custody or not, the marshal, &c. shall give a true note in writing thereof to the person so requesting the same, or to his lawful attorney, upon demand at his office for that purpose, or in default thereof shall forfeit 50*l.*; and if such marshal, &c. shall give a note in writing that such person is an actual prisoner in his or their custody, every such note shall be taken as a sufficient evidence that such person was at that time a prisoner in actual custody.”

Every person in prison by process of law is to be kept in *salva et arctâ custodiâ*, in order to compel them the more speedily to pay their debts, and make satisfaction to their creditors (*a*).

When a person is *acknowledged* to be in *actual custody*, delivering a writ to the sheriff against such person is an arrest in law, and will subject the sheriff or other officer in case of an escape (*b*).

If the plaintiff, by word, license the sheriff to deliver the prisoner, no action will lie for an escape. no action lies.

The sheriff shall be liable for an escape of any committed to him on an escape warrant. So on process of the Admiralty (*c*), or on a *capias utlagatum* (*d*).

There are two kinds of escapes, the one *voluntary* and the other *negligent*.

Voluntary is when an officer arrests another for a debt, and lets him go by consent; in which case the sheriff is answerable to the plaintiff for damages, for a voluntary escape cannot be justified. Therefore, where one was intrusted with the keys of the prison, and he lets himself out, this is a voluntary escape (*e*).

If a gaoler makes a prisoner in execution turnkey, and he goes out on an errand, and returns, it is a *voluntary* escape (*f*).

c. 27. s. 9.

If any one desires to charge in custody, and wishes to be informed of the prisoner, marshal, &c. to give true note in writing, and in default to forfeit 50*l.*

Every person to be kept in safe and close custody.

If there be an acknowledgment in custody, and after an escape.

Plaintiff's license to deliver, 27 H. 8. c. 24.

Liable if committed on escape warrant, &c. 1 Ann. s. 1. c. 6.

Two kinds of escapes.

Voluntary, what.

Turnkey.

- (*a*) Plow. 36. 3 Co. 44. 2 Inst. 381. 1 Roll. Abr. 106.
 (*b*) Jackson v. Humphreys, Salk. 274.
 (*c*) Sav. 11, 15.
 (*d*) 5 Mod. 200. 2 Str. 901.
 (*e*) Wilkinson v. Salter, Cas. T.
 (*f*) 1b. 310.

Bailiff may retake, though he let the prisoner go.

A bailiff who has arrested a prisoner on *mesne process* may retake him *before the return of the writ*, though he *voluntarily* permit the prisoner to escape immediately after the arrest (*g*).

Voluntary return before action.

A voluntary return of a prisoner after an escape, *before action brought*, is equal to a retaking on a fresh pursuit, but it must be pleaded (*h*).

Where defendant is kept in sheriff's custody after return of writ.

If a sheriff, having arrested defendant on *mesne process*, keep him in his custody *after the return of the writ*, and then carry him to prison, he is not liable for an escape if the jury find that the plaintiff has not been delayed or prejudiced in his suit (*i*).

Plaintiff in an action for an escape must prove his debt.

In an action against the sheriff for the escape of a prisoner on *mesne process*, the plaintiff was nonsuited, because he could not prove any debt against the prisoner who escaped (*k*).

An administratrix may maintain the action.

An administratrix may maintain an action in her own name against the marshal or sheriff for the escape of a prisoner who is in execution of a judgment obtained *by her* as administratrix (*l*).

If the party escapes out of one of the compters in *London*, the action shall be brought against *both* sheriffs (*m*).

If taken in execution, and goes with a follower.

If a sheriff's officer, having taken a prisoner in execution, permit him to go about with a follower of his before he takes him to prison, it is an escape (*n*).

If seen at large.

If the defendant be taken in execution, and seen at large for any the shortest time even before the return of the writ, it is an escape (*o*). But the party out on a day-rule, being seen out at half-past eleven at night, although an abuse of the rule, held yet no evidence of an escape if he returned within the rules before twelve (*p*).

Wardens and turnkey to the Fleet.

But where the turnkey lets the prisoner out, it was held that he not being the warden's deputy, it was a negligent escape, and not a voluntary. But had he been the warden's deputy, it had been otherwise.

(*g*) Atkinson v. Matteson, 2 T. R. 172.

(*m*) Reading v. Edwin, Carth. 145.

(*h*) Bonafous v. Walker, 2 T. R. 126.

(*n*) Benton v. Sutton, 1 B. & P. 24.

(*i*) 5 T. R. 37.

(*o*) 2 Bl. R. 1048.

(*k*) Alexander v. Macauley, 4 T. R. 611.

(*p*) Ruthven v. Brown, 2 Car. & P. N. P. 535.

(*l*) 2 T. R. 126.

Negligent escape is when one is arrested, and afterwards escapes against the will of him that arrested him or had him in custody, and is not pursued by a *fresh suit*, and taken again before the party pursuing hath lost sight of him (*q*).

Negligent escape.

There is a difference between an escape on *mesne process* and *execution*: if a sheriff arrests the person on *mesne process*, and he is rescued by *J. S.*, he may return the rescue, and such return is good, and no action of escape lies against him after such return (*r*).

Difference between an escape on mesne process and execution.

And an attachment for non-payment of costs, being in the nature of *mesne process*, it is sufficient if the sheriff have the party in custody at the return of the writ, and he is not then liable to an action for an escape(s); and where liable, it is only to the extent of what the plaintiff could have recovered in the action if he had proceeded to judgment and execution (*t*).

But after judgment on a *ca. sa.*, the defendant is arrested, the sheriff cannot return a rescue, for in such case the sheriff is obliged to raise the *posse comitatus*, if needful (*u*).

If after judgment on a *ca. sa.*, sheriff cannot return a rescue, but must raise *posse*.

If a man be taken in *execution* upon a *capias ad satisfaciendum*, and is committed to the gaol, and the sheriff suffereth him to make an escape, the sheriff is chargeable for the whole debt (*x*).

If taken in execution, and escapes, debt lies.

But in an action for escape, if the plaintiff aver that the prisoner was indebted to him for *goods sold*, the averment must be strictly proved (*y*).

In *Trin. 1774*, a declaration was delivered to the turnkey of the Fleet against defendant, who was a prisoner. On 1st *October* the defendant voluntarily permitted to escape, and go at large. That plaintiff, knowing of such escape on 1st of *October*, did proceed, and in *Hilary* term obtained final judgment. That after final judgment, the plaintiff commenced his action against the warden. Defendant, having so escaped on 1st of *October*, returned to

Action on the case for an escape upon mesne process, not guilty pleaded, it turns out on a voluntary escape the prisoner returns to the Fleet the same day, and

(*q*) Crompt. Just. 36.

(*r*) 1 Roll. Ab. 807. 1 Jon. 207.

1 Roll. R. 388. 3 Lev. 46.

(*s*) Lewis v. Morland, 2 B. & A. 56.

(*t*) R. v. Sh. of London, 2 B. & A. 192. Stra. 515.

(*u*) 1 Roll. 807. Cro. Car. 240.

255. 8 Co. 42. Cro. El. 868.

Bull. N. P. 59, 60.

(*x*) 3 Co. 5. Dalt. 484. Bonafous v. Walker, 2 T. R. 126. S. P. Bl. Rep. 1048, and Robertson v. Taylor, 2 Ch. 454.

(*y*) Parker v. Fenn, 2 Esp. 477, n. Sed vide 2 Lev. 85. 8 T. R. 127. Cro. El. 877. 1 Lutw. 108-10.

the plaintiff proceeds to final judgment, yet the action lies against the warden, though not brought till after final judgment obtained.

Prisoner on voluntary escape is instantly at large, and gaoler cannot retake.

Plaintiff may retake, but at his option.

Not now a prisoner at plaintiff's suit.

Nothing purges a voluntary escape.

Sheriff suffered a voluntary escape, the prisoner discharged from the creditor, and action transferred to the sheriff.

c. 26.

Voluntary and permissive escapes taken away with regard to the plaintiff by this act.

s. 7.

Does not take away plaintiff's right against sheriff.

the Fleet prison on same day, and has ever since continued therein in defendant's custody. Verdict for plaintiff, subject to the opinion of the court.

Per Cur.—Whenever a gaoler permits a *voluntary escape*, from that moment he commits a *tort*, and the plaintiff has a right of action to recover such damages as a jury shall please to give him; the prisoner, when voluntarily suffered by the gaoler to escape, is instantly at large; the gaoler cannot afterwards retake and detain him for the same matter; the plaintiff may retake him by an escape warrant, but has his option to proceed as he pleases, either against the defendant or the warden; defendant is not now a prisoner at the plaintiff's suit, although he be locked up every night, and though the plaintiff might lawfully proceed to judgment against him, yet he could not charge him in execution. *Skin.* 582, is in point. There is not the least doubt but that judgment ought to be for the plaintiff, and if we should do otherwise, we should permit every gaoler in *England* to let his prisoners go at large, as much as if they had never been arrested; if the escape be *voluntary* in the gaoler, nothing afterwards will purge it. Judgment for the plaintiff (z).

It was formerly held, that when the sheriff suffered a prisoner in execution to make a voluntary escape, the prisoner was in such case absolutely discharged from the creditor, and that the right of action was entirely transferred against the sheriff, who by means of such escape became *debitor ex delicto* (a).

But the 8 & 9 W. 3, hath taken away all distinction between *voluntary* and *permissive escapes*, with regard to the plaintiff's remedy, enacting,

“That if any prisoner who is or shall be committed in execution to any or either of the said respective prisons, shall escape from thence by any ways or means howsoever, the creditor or creditors at whose suit such prisoner was charged in execution at the time of his escape shall or may retake such prisoner by any new *capias* or *ca. sa.*, or sue forth any other kind of execution on the judgment, as if the body of the prisoner had never been taken in execution.”

But this act does not take away the plaintiff's remedy by action for the escape against the sheriff, for he has no occasion to proceed against the defendant unless he thinks

(z) Salk 271. *Ravenscroft v. Eyles* (a) Leon. 73.
2 Wils. 291.

proper, but may proceed against the sheriff for his damages, and leave the sheriff to justify his conduct.

And if the plaintiff elects to proceed against the sheriff for the escape, the court will not, by compelling him to bring in the body, enable the plaintiff to proceed in the original action for costs (b).

“ If any marshal or warden, or their respective deputy or deputies, or any keeper of any other prison within this kingdom, shall take any sum of money, reward or gratuity whatsoever, or security for the same, to procure, assist, connive at or permit any such escape, and shall be thereof lawfully convicted, the said marshal, &c. as aforesaid, shall for every such offence forfeit 500*l.* and his said office, and be for ever after incapable of executing any such office.”

If the marshal, &c. shall take a reward from a prisoner to effect an escape, he forfeits 500*l.*

8 & 9 W. 3.
c. 26. s. 4.

All prisoners, either upon *contempt* or *mesne process*, or in execution, who shall be committed to the custody of the marshal of the *King's Bench* prison, or warden of the *Fleet*, shall be detained within the said prisons, or the rules of the same, until they be discharged by due course of law; and if the said marshal or warden, or any other keeper of any prison, shall suffer any prisoner to go at large out of the rules (except by habeas corpus or rule of court, which rule shall not be granted but by motion made or petition read in court,) every such going or being out of the said rules shall be adjudged and deemed and is hereby declared to be an escape.

All prisoners, either on contempt or mesne process, or in execution, shall be detained within the prison or rules, unless by *hab. corp.* or rule of court.

8 & 9 W. 3.
c. 26. s. 1.

Escape from the rules is not a voluntary escape, without the marshal's knowledge (c).

Every person obtaining judgment in any escape against the marshal, &c., shall have not only the remedies already by law allowed, but the judges of the courts where such judgments shall be obtained (upon oath made by the persons obtaining such judgment that the same was obtained without fraud or covin, and that the debt of the prisoner making such escape was a true and real debt, and unsatisfied,) shall, upon motion, sequester the profits of the office of marshal, &c., or so much thereof as they shall think fit, and apply the same towards satisfaction of the debt due from the prisoner who escaped, together with all costs and damages recovered. And if they sue forth any writ of error, they shall put in bail.

Every person obtaining judgment against the marshal or warden to have all remedies against them by law allowed; but judges to sequester the profits of the office.

If they bring error, bail.
s. 2, 3.
c. 30.

By 5 Geo. 2,

In case any gaoler to whom a bankrupt is committed shall willfully suffer such person to escape, or to go without

If a bankrupt is committed and escape, to forfeit 500*l.*

(b) Berwick v. Walton, 2 B & A. 623.

(c) 2 T. R. 126.

s. 18.

If a sheriff or officer does, by colour of an *hab. corp.*, suffer a prisoner to go at large, it is an escape.

If the defendant be in prison, and an *hab. corp.* is brought, and he is rescued going to court.

If he be arrested going to gaol, and rescued.

If he be once within the walls of the prison, though on *mesne process*, yet a rescue from thence is no excuse.

Must take care that he does not let the prisoner more at liberty than he ought.

If sheriff suffers party to go at large without bail-bond.

the walls or doors of the prison, such gaoler shall, for such offence, being convicted by indictment or information, forfeit 500 *l.* for the use of the creditors.

The writ of *habeas corpus* is an ancient writ, and what the subject is by law entitled to; yet if a sheriff or other officer, who hath the custody of a prisoner does, by colour thereof, suffer the prisoner to go at large, it is an escape (*d*).

The sheriff was ordered to bring up the body in custody in *Newgate* on *mesne process*, by *habeas corpus*, and the defendant was rescued going to court; the sheriff was held to be liable; for the sheriff having had notice when the body was to be brought up, he might have provided against a rescue by assembling the *posse comitatus* (*e*).

If the sheriff arrest the party by virtue of *mesne process*, and he is rescued as he carries him to gaol, it will be a good excuse for the sheriff (*f*).

And, on the other hand, if the party be once within the walls of the prison, though the custody be on *mesne process* only, yet a rescue from thence by any but common enemies, will be no excuse: if a company of rebels break the prison and let out the prisoners, yet the sheriff is answerable, because the law supposes the sheriff and his *posse* are sufficient to resist such a force. But in the case of *mesne process*, if the sheriff meets the party again by accident (having process) and is told it is the defendant, he is bound to arrest him; and then, because it is not supposed that he has always the *posse* along with him, he is excused against a rescue (*g*).

As the sheriff must be careful that he does not give the prisoner more liberty than by law he ought to do, when he acts in obedience to a lawful authority, so he must take care that he does not let him go at large by colour of a void authority (*h*).

If a sheriff, after arrest, suffers the prisoner to go at large without bail-bond, and afterwards returns *cepi corpus*, and before the expiration of a rule to bring in the body puts in bail, he is not liable either in an action for an escape or for a false return (*i*).

(*d*) Cro. Car. 14.⁷ Roll, Abr. 808. Hob. 202. 3 Co. 44.

(*e*) Crompton v. Ward, 1 Str. 429.

(*f*) Cro. Jac. 419. 1 Str. 435.

(*g*) 1 Roll. Abr. 811. 4 Co. 84. Crompton v. Ward, 1 Str. 435.

(*h*) Dalt. Sh. 486.

(*i*) Pariente v. Plumbtree, 2 B. & P. 35. Evans v. Swete, 2 Bing. 271.

“ If any marshal or warden for the time being, or their
 “ respective deputy or deputies, or other keeper or keepers
 “ of any other prison or prisons, shall, after one day’s
 “ notice in writing given for that purpose, refuse to show
 “ any prisoner committed in execution to the creditor at
 “ whose suit such prisoner was committed or charged, or
 “ to his attorney, every such refusal shall be adjudged to
 “ be an escape in law.”

escape. 8 & 9 W. 3.

Upon one day’s
 notice in writ-
 ing, the marshal,
 &c. shall show
 the prisoner to
 the creditor at
 whose suit he is,
 or shall be
 adjudged an
 c. 27. s. 8.

The gaoler shall upon request of any creditor having
 proved his debt, and producing a certificate thereof under
 the hands of the commissioners, (which the commissioners
 are to give *gratis*,) produce such person so committed;
 and in case of refusal he shall forfeit 100 *l.* for the use of
 the creditors, to be recovered by action of debt in the
 name of the creditor requesting such sight.

Gaoler to pro-
 duce bankrupt
 to creditor.

5 Geo. 2. c. 30.
 s. 19.

If the party arrested had escaped of his own wrong,
 without the consent of the officer, upon fresh suit the
 officer may take him again and again, so often as he
 escapeth, although he were out of view, or that he shall
 fly into another town or county, and bring him before
 the justice upon whose warrant he was first arrested (*h*).

But if he is
 arrested and
 escapes of his
 own wrong, the
 officer may take
 him.

But it is said generally in some books, that an officer
 who hath *negligently* suffered a prisoner to escape, may
 retake him wherever he finds him, without mentioning any
 fresh pursuit; and indeed, since the liberty gained by the
 prisoner is wholly owing to his *own wrong*, there seems to
 be no reason he should take any manner of advantage
 from it (*l*).

Yet it is said in
 some books that
 he may retake,
 though the es-
 cape were neg-
 ligent.

Escape Warrant.

By 1 *Ann.* it is enacted,

c. 6.

“ That if any person already committed, rendered or
 “ charged, or who shall hereafter be committed, or rendered
 “ to, or charged in the custody of the marshal of the *Queen’s*
 “ *Bench* for the time being, or to or in the prison of the
 “ *Fleet*, either in *execution* or upon *mesne process*, or upon any
 “ *contempt* in not performing such order or decree, by any
 “ of Her Majesty’s courts at *Westminster*, and such person
 “ shall, at any time after such commitment, render, charge,
 “ or being in execution, and before he, she or they shall
 “ have made payment or satisfaction to the respective
 “ plaintiff or plaintiffs, creditor or creditors, or shall have
 “ cleared him, her or themselves of such contempts, as he,
 “ she or they were or shall be charged with at the time

Persons in the
 Queen’s Bench
 or Fleet prison,
 committed, or
 rendered, or
 charged in the
 custody of the
 marshal or Fleet
 prison, on mesne
 process or exe-
 cution, &c.

(*k*) Dalt. c. 113.

(*l*) 2 Haw. 131, 132.

Making escape,
&c.

It shall be law-
ful, upon oath
thereof made,
for the judge to
grant a warrant
for re-taking
such prisoner.

Directed to all
sheriffs, mayors,
&c. to seize and
re-take him.

Who shall con-
vey and commit
to the county
gaol, where
taken, there to
remain, &c.

Exception.

“ of such their commitment, &c. as aforesaid, making any
“ escape from the custody of the marshal of the *Queen's*
“ *Bench* for the time being, or from the prison of the said
“ *Queen's Bench*, or from the prison of the *Fleet*, or either
“ of them, or shall go at large, at any time after the three-
“ and-twentieth day of *Jan.* 1702, it shall and may be
“ lawful, upon oath thereof in writing, to be made by one
“ or more creditable person, before any one of the judges
“ of that court where such action was entered, or judgment
“ and execution were obtained, or where the party was so
“ committed or charged as aforesaid, to and for such judge
“ before whom such oath shall be made as abovesaid, and
“ such judge is hereby authorized and required from time
“ to time to grant unto any person whatsoever who shall
“ demand the same, one or more warrant or warrants under
“ his hand and seal, therein reciting the action or actions,
“ execution or executions, contempt or contempts, with
“ which such person or persons so escaping or going at
“ large stood charged, or were committed at the suit of
“ any person or persons on whose behalf such warrant or
“ warrants shall be demanded at the time of such escape
“ or going at large, (which such warrant or warrants shall
“ be in force in all places whatsoever within the kingdom
“ of *England*, dominion of *Wales*, and town of *Berwick-*
“ *upon-Tweed*;) directed to all sheriffs, mayors, bailiffs, con-
“ stables, headboroughs and tithing-men, therein and thereby
“ commanding them, and every of them, in their respective
“ counties, cities, towns and precincts, to seize and retake
“ such person or persons so escaped or going at large, and
“ such person or persons so retaken upon such warrant
“ forthwith to convey and commit to the common gaol of
“ such county where such person or persons so escaped or
“ going at large shall be retaken, there to remain without
“ bail or mainprize, or being thence upon any account
“ whatsoever delivered or removed, until he, she or they
“ shall have made full payment or satisfaction to the re-
“ spective plaintiff or plaintiffs, creditor or creditors, in
“ such action, &c. named, or until the judgment or judg-
“ ments on which such execution or executions was or
“ or were sued out against such person or persons shall be
“ reversed or discharged by due course of law, or until
“ judgment in such action or actions be given for such
“ person or persons so committed as aforesaid, or until the
“ said contempt or contempts for which such person or
“ persons were or shall be committed be cleared and dis-
“ charged; except such person or persons be charged with
“ *treason or felony, or any other crime, matter or cause*, for
“ or on the behalf of the queen's majesty, her heirs and

“ successors ; and if he or she for any such cause on behalf
 “ the queen, her heirs and successors, be removed to any
 “ other gaol or prison, he or she shall be in the custody of
 “ such gaol charged with all the causes with which he or
 “ she is or shall be charged in the gaol from whence he or
 “ she shall be removed : And every mayor or other officer,
 “ as aforesaid, after delivery of such prisoner so retaken,
 “ together with such warrant to the sheriff, shall take
 “ a note in writing from such sheriff, testifying the receipt
 “ of such prisoner, which said sheriff is hereby required to
 “ receive such prisoner and give such note. And every
 “ such sheriff as aforesaid, after the execution of such
 “ warrant, shall forthwith make a return thereof to the
 “ court where the action shall be depending, or judgment,
 “ order or decree had or obtained ; which shall be entered
 “ and filed upon record.”

Every mayor,
 &c. after deli-
 very of prisoner,
 shall take a re-
 ceipt from
 sheriff.

Sheriff to make
 return of war-
 rant, &c.

After a *voluntary* escape, gaoler cannot retake the prisoner ; after an *involuntary* escape, he may, without warrant, and on a *Sunday* (*m*).

After voluntary
 escape cannot
 re-take.

Escape lies though taken upon an escape warrant (*n*).

If a prisoner in execution in K. B. be turned over to the Fleet, and escape, a judge of the King's Bench or Common Pleas may grant an escape warrant (*o*). And he cannot come out on a day-rule (*p*). He may be taken on a *Sunday* (*q*). But cannot be brought before a judge by a day-rule, as another prisoner may, to show cause of action against another (*r*).

If a prisoner in
 execution in
 K. B. be turned
 over to the Fleet,
 a judge of K. B.
 or C. P. may
 grant warrant.
 May be taken
 on a Sunday.

But if the party be not taken by *lawful authority* upon an escape warrant, if this appears upon the return of the warrant, he shall not be committed to the county gaol, but to the former prison, as if brought not by a constable or other officer, but by persons not known (*s*).

If not taken by
 lawful autho-
 rity, shall not
 be committed.

If a man escape, and returns again, and then commits a second escape, he cannot be taken up for the first escape, it being purged by his return (*t*).

cannot be taken

If he escapes
 and returns,
 and commits a
 second escape,
 for the first.

So if he be discharged by agreement, after commitment upon an escape warrant, he shall not be afterwards retaken (*u*).

If discharged
 by agreement.

(*m*) Barnes, 373. 5 T. R. 28.

(*n*) Com. Dig. title Escape.

(*o*) 8 Mod. 240.

(*p*) 6 Mod. 63.

(*q*) 6 Mod. 95. 2 Salk. 626. 2

Lord Ray. 1028. Str. 387.

(*r*) 6 Mod. 63.

(*s*) Mod. Cas. 154.

(*t*) Stra. 423.

(*u*) Mod. Cas. 254.

If prisoner is entitled to his discharge.

If the defendant is entitled to his discharge at the time of his escape, and would be entitled to it as soon as taken on the escape warrant, the court will supersede the warrant (*x*).

Cannot be retaken for fees.

If a prisoner escapes, and plaintiff sends an order for his discharge, the gaoler cannot take him for his fees (*y*).

If prisoner escapes by negligence, sheriff may retake.

If the prisoner escape by negligence of the sheriff, the sheriff may retake him, and he shall not have an *auditâ querelâ* (*z*).

Or may have an action.

Or he may have an action on the case against the prisoner for his escape, whereby he becomes subject to the action of the party (*a*). And this before an action or recovery against the sheriff, as well as after (*b*).

And this before action against sheriff.

But if voluntarily.

But if he escapes *voluntarily*, he cannot be *retaken*, by the sheriff nor plaintiff, except by a new *ca. sa.* But if he be let out of prison *with plaintiff's consent*, the judgment is discharged, and he cannot be retaken at all (*c*).

What shall not be an Escape.

What no escape.

It will not be an escape if the party was *never* in custody; as if the old sheriff does not deliver him over upon such execution (*d*). So if the officer never touched the party, it is no arrest, and consequently no escape (*e*). So if he goes out of prison by reason of a sudden fire in the gaol (*f*); or the gaol be broke by the king's enemies (*g*). If rescued on mesne process before he was in gaol (*h*). Though the rescous be not returned; or if it be (*i*). So if the defendant be retaken on fresh suit *before* action commenced for the escape (*k*). Though the fresh suit was not begun till a day and night after the escape (*l*). Nor though he did not retake him till he fled into another county (*m*). Though he was out of sight.

(*x*) Webb v. Thomson, Str. 401.

(*e*) Russen v. Lucas, 1 Ry. & M. 26.

(*y*) Str. 909.

(*f*) 1 Roll. 808, b. 7.

(*z*) 3 Co. 32, b. 1 Sid. 330. Mod. 660.

(*g*) Bro. Escape, 10. 1 Roll. 808.

(*a*) Cro. El. 53. 237. 1 Lev. 237. Lut. 64. Mod. 660.

1. 5.

(*b*) Mod. 660. Godb. 125. Cro. El. 53.

(*h*) 1 Roll. 807. l. 35. 2 Cro. 419. 2 Lev. 144. 1 Roll. 389.

(*c*) Barnes, 373. Show. 174. 1 Saund. 35. n. 1.

(*i*) 2 Lev. 144. 1 Roll. 440.

(*d*) 3 Co. 72. 2 Lev. 51.

(*k*) 1 Roll. 808. l. 52. 3 Cro. 52. Godb. 401.

(*l*) 1 Roll. 809. l. 10.

(*m*) 3 Co. 52. Bro. Escape, 51.

So a voluntary return of a prisoner after an escape, *before action brought*, is equivalent to a retaking on a fresh pursuit, but it must be pleaded (*n*).

Voluntary return.

The sheriff shall not be charged for an escape if the prisoner goes out of prison with the *assent* of his creditor (*o*), though the assent be only by parol (*p*).

Assent of the plaintiff.

So it will not be an escape if the sheriff upon an *hab. corp.* brings his prisoner to *Westminster*, though he goes out of the direct way (*q*).

Though he go out of the direct way on *hab. corp.*

Where a new sheriff is appointed, his predecessor ought to deliver over by indenture all the prisoners in his custody, charged with their respective executions: for the prisoners, until they are turned over to the new sheriff, remain in the custody of the old sheriff; and if he omits to deliver them over, every *omission* will be deemed an escape, wherewith he will be chargeable (*r*).

Of the preceding or succeeding sheriff. Prisoners omitted to be turned over to new sheriff, will be deemed an escape.

J. S. being in execution in the Fleet, was suffered to make a voluntary escape, after which he returned again to the Fleet; and the defendant being made warden in the place of the former warden, *J. S.* was turned over with the other prisoners, and afterwards suffered to escape; and the question was, whether the voluntary escape suffered by the former warden did not so entirely discharge the execution, that the prisoner could not be retaken, nor judged in execution by law, even though he should yield himself to it? And it was held, that it did not, and that the succeeding warden should be chargeable with the escape suffered in his time (*s*).

Gaoler suffers a voluntary escape in *A.* who comes back to the prison, and escapes again in the time of a succeeding gaoler, he is chargeable.

So in the case of one *Grant*, who, being in the custody of the former marshal, was suffered by him voluntarily to escape, after which he returned voluntarily to prison, and being found in prison, the succeeding marshal detained him; and in an action of false imprisonment brought by him, the court held that he might, and that if he had suffered him to go at large, it would be an escape (*t*).

One voluntarily suffered to escape, voluntarily returned, and being detained, brought an action, held lawful.

(*n*) *Bonafous v. Walker*, 2 T. R. Cro. El. 365. Bulst. 70. 2 Leon. 126. 54. 4 Co. 72.

(*o*) 2 Inst. 382.

(*p*) Dy. 275, a.

(*q*) 3 Co. 44. Mo. 299.

(*r*) Hob. 266. 2 Roll. Abr. 457. Stra. 423.

(*s*) *Lenthal v. Lenthal*, 2 Lev. 109. *James v. Pierce*, 3 Keb. 487. S. C. Vent. 269.

(*t*) 6 Mod. 183. *Grant v. Southers*,

Remedy for an Escape.

By common law, sheriff to keep persons in execution in custody.

By the common law, the sheriff and every gaoler ought to keep persons *in execution, in salvâ custodia* (x). And *whether* upon *mesne process*, or in *execution*, the plaintiff had no remedy but by action on the case (y).

c. 11.

The 13 *Ed.* 1, enacts,

Servants, &c. found in arrear to be committed to gaol till they have satisfied the master; and sheriff not to suffer them to go at large.

"That servants, bailiffs, and all receivers which are accountable, being found in arrear by auditors assigned by their masters, they shall be committed to gaol till they have satisfied the master; and let the sheriff or gaoler take heed that they do not suffer him to go at large by *replegiare*, or otherwise, without the assent of his master. And if he do, he shall answer to the master the damages, and the master shall have the recovery thereof by a *writ of debt*; and if the gaoler have not wherewithal, *his superior* shall answer."

Superior.

c. 12.

By the 1 *R.* 2.

Warden not to suffer any prisoner to go out of prison unless by writ.

"No warden of the *Fleet* shall suffer any prisoner, there being judgment, to go out of prison by bail nor by baston, without making gree to the parties of that whereof they were judged, unless it be by writ or command of the king, upon pain to lose his office; and if such warden be attainted that he has suffered such prisoner to go at large, the plaintiffs shall have their recovery against the warden *by writ of debt*."

By the equitable construction of these statutes, debt lies against sheriffs for escapes.

c. 12.

By the equitable construction of the 13 *Ed.* 1, the action of debt is given against sheriffs; and by the 1 *R.* 2, against the warden of the *Fleet* for escapes in execution, and the statute of *Rich.* 2. extends to *all gaolers and keepers of prisons*, though they be infants or *femes covert* (z).

When case lies, and when debt lies for escapes.

Trespass on the case only lies in cases of escapes on *mesne process*; but where the party is in *execution*, debt lies under the two statutes before mentioned, and the jury in the latter case cannot give a less sum in damages than the creditor would have recovered against the prisoner, *viz.* the sum indorsed on the writ, and sheriff's poundage (a). But in the *former* case the plaintiff recovers only the damages he has sustained, and if no damage be sustained, the plaintiff has no cause of action (b).

(x) 3 Co. 44.

(z) 2 Inst. 382.

(y) 2 Inst. 382. 1 Roll. Abr. 99.

(a) Bonafous v. Walker, 2 T. R.

l. 10. 15. 2 Cro. 289. Saund. 34. 126.

2 Lev. 159.

(b) Planck v. Anderson, 5 T. R. 37.

Debt lies, by 1 R. 2, as well for a *negligent* as for a *voluntary* escape (c). c. 12.
Debt lies, as
well for negligent as for a voluntary escape.

The plaintiff has his election to bring debt or case for an escape in execution (d). And plaintiff
may bring debt
or case.

If a prisoner, in custody on a *cap. utlag.*, is suffered to escape, the plaintiff may either maintain an action *quittam* against the sheriff, or debt in his own right (e). If in custody on
a *cap. utlag.*

Husband and wife may join in the action, if one in execution at their suit or process out of a court of equity be suffered to escape (f). Husband and
wife may join.

An administratrix may maintain this action in her own name, on a judgment obtained by her as administratrix (g). An adminis-
tratrix.

Under a count for a *voluntary* escape, the plaintiff may give evidence of a *negligent* escape (h). Under a count
for a voluntary
escape.

Case lies for escape of an outlaw on *mesne process*, (but not debt) (i). Outlaw.

By 1 Ann. the sheriff shall be liable for an escape of any committed to him on an escape warrant. Escape warrant.
st. 2. c. 6.

By 19 H. 7. the *sheriff* of every county shall have the keeping of the common goal there, (except such as are held by inheritance or succession). Upon this statute, it was resolved, that grants of custodies of gaols lately made by H. 8, or after granted to divers persons, were utterly void, and that inasmuch as the custody of them belonged to the office of sheriff, who, being immediate officer to the king's court, *shall answer for escapes*, and be subject to amerciamment, if he has not the body in court upon process, &c., and it is reason that he put in *such keepers* for whom he will answer (k). Sheriff of every
county to keep
the gaol, and he
is liable to an-
swer for escapes;
19 H. 7. c. 10.

In civil actions of escape, the sheriff is answerable for his under-sheriff, if the prisoner be taken (l). and be an-
swerable for
his keeper.
In civil actions
for escapes,
sheriff liable for
bailiff, &c.

If there be two sheriffs of the same place, and an action of escape be brought against them *both*, if one dies the writ shall not abate (m); but the death may be suggested on the roll. If there be two
sheriffs and
escape brought
against both,
3. c. 11. s. 7.

(c) Stonehouse v. Mullins, 2 Str. 373. (h) Bonafous v. Walker, 2 Tr. R. 126.

(d) Cro. Jac. 285. 2 Bulstr. 321. (i) Cooke v. Champneys, 2 Str. 901.

(e) Cro. Jac. 301. 533. 619. Cro. El. 877. (k) 4 Rep. 34. 1 Andrews, 345.

(f) Huggins v. Durham, 2 Str. 726. (l) Dalt. 484. cites 1 R. 2. c. 12,
and 7 H. 4. c. 4. Fitz. 93. Br. Officer,
24 and 33, and 2 Inst. 382. 1 Roll.

(g) Bonafous v. Walker, 2 T. R. 126. (m) Cro. El. 625.

Will not judge an escape by strict construction.

The judges will not judge of an escape by any *strict* construction (*n*); and the plaintiff must strictly prove the averments of the original cause of action in his declaration against the sheriff for not arresting (*o*).

Surviving sheriff.

It lies against the surviving sheriff, when one of them dies (*p*).

c. 27. s. 11.

By 8 & 9 W. 3,

Marshal and warden are liable for all escapes.

The offices of the marshal of the King's Bench prison, and warden of the Fleet, shall be executed by the several persons to whom the *inheritance* belongs respectively in person, or their deputies; and for all forfeitures, escapes, &c. in their offices, by their deputies, the persons in whom the inheritance is shall be answerable.

When bailiff of liberty liable.

If a writ comes to the sheriff, and he makes out his mandate to the bailiff of a liberty, who takes the party, and after suffers him to escape, an action lies against the bailiff of the franchise, and not the sheriff (*q*).

Sheriff, how connected with acts of the bailiff.

In an action for an escape on mesne process, the sheriff's return is not conclusive, and the plaintiff cannot insist on a copy of the return indorsed on the copy of the writ being read as part of the document (*r*). An indorsement of a bailiff's name by a clerk in the sheriff's office, is sufficient proof of the sheriff's authority to appoint such bailiff, and also *primâ facie* evidence that the officer acted under that authority (*s*). Production of the writ, with the bailiff's name indorsed, is sufficient to connect him with the bailiff, without producing the warrant, it being shown to be the custom of the office so to indorse the officer's name who executes it (*t*): and whatever would be evidence against the party is also evidence in the action against the sheriff (*u*). But if the officer be called to show the authority, he is a witness for all purposes, although, in fact, the real party in the cause (*x*).

A bill must be filed against marshal, &c.

If proceedings are against the *marshal* or *warden* for an escape, a bill must be filed against them in their respective courts; but if a sheriff is sued, process must be directed to the coroner: if against the late sheriff, it is to be directed to the present sheriff.

(*n*) Boyton's case, 3 Rep. 43.

(*t*) Cowp. 66. Tealby v. Gas-

(*o*) Parker v. Fenn, 2 Esp. 477. n.

coigne. 2 Stark. 202. Bowden v.

(*p*) Cro. El. 625.

Waithman, 5 B. Moore, 183.

(*q*) Roll. Ab. 98. Noy. 27.

(*u*) Williams v. Bridges, 2 Star.

(*r*) Adey v. Bridges, 2 Star. 189.

42. Peake, N. P. 65. 2 Esp. 695.

(*s*) Francis v. Neave, 3 B. & P.

(*x*) Morgan v. Bridges, 2 Stark.

In debt for an escape the indorsement of *non est inventus* on the *ca. sa.* is sufficient evidence of its having been delivered to the sheriff; and a *legal* arrest must be proved (*y*). Evidence of delivery of writ.

The sheriff's return is *primâ facie* evidence of the facts returned (*z*). Sheriff's return evidence.

Of Gaols in Fee.

If he who has the custody of a gaol *in fee* substitutes another for life, or at will, the action will be against him, for he has the *actual possession* of the office (*a*).

So if an escape be out of the custody of mayor or bailiffs of a city, town, &c. which has a gaol, the action shall be against them, and not against the sheriff. Mayor, &c.

So it shall be against the bailiff of a franchise, if the escape be by him (*b*). Bailiff of a franchise.

So against both the sheriffs of *London*, if the escape be after an arrest upon a plaint in the compter of one of them; or against the survivor, where one dies (*c*). Sheriffs of London on plaint.

So against the old sheriff, if he omits to deliver any prisoner by indenture to the new (*d*). Old sheriff.

But an action shall not be against the superior if the inferior be sufficient (*e*). But in all cases where the inferior is insufficient, debt lies against the superior for the escape (*f*). Superior and inferior.

If he be insufficient at the time of the action brought, though he was sufficient at the time of the commitment or escape, for that is the time most regarded (*g*). If the inferior be insufficient.

The *superior*, against whom the action ought to be brought, is he who, by his estate in his office, or by his authority without estate, has the power of putting in the inferior officer (*h*); as the Duke of *N.* being marshal of *England* in fee, makes a deputy, he is the *superior*, and the deputy the inferior officer (*i*). Who is superior.

If a man who has the custody of a gaol in fee grants it for three lives, he is the superior, and the grantee the inferior. There cannot be two superiors within the statute.

(*y*) Cowp. 63.

(*z*) 11 East, 297.

(*a*) 9 Co. 98. a.

(*b*) 1 Roll. 99. l. 15.

(*c*) Carth. 145. Cro. El. 625.

(*d*) 2 Lev. 31.

(*e*) 2 Inst. 382.

(*f*) 2 Jon. 60. 2 Lev. 158. 9 Co. 98. a.

(*g*) 2 Jon. 61. 2 Lev. 120.

(*h*) 2 Jon. 61.

(*i*) 2 Inst. 382. 9 Co. 98. b.

The sheriffs of *London* are the inferior, the mayor and commonalty the superior (*k*).

So is the dean and chapter of *Westminster*.

The dean and chapter of *Westminster* are the superior, and the bailiff the inferior (*l*).

So the lord of a franchise, who has a gaoler, is the superior, and shall answer for his gaoler (*m*).

Not against superior on general declaration for an escape.

But debt does not lie against the superior upon a *general declaration* for an escape; but he ought to be *specially* charged for the insufficiency of the inferior (*n*).

In reversion.

So if a man has the custody of a gaol in fee in reversion, after a grant thereof for life, rendering rent, which was not made by him, the reversioner is not superior; for the superior is not such in respect of the rent, or the reversion, but in regard that the inferior officer derives his estate from him (*o*).

Sheriff's Defence.

If the prison takes fire sheriff excused.
3 E. 6. 66. 15.

If the prison takes fire, by means whereof the prisoners escape, this shall excuse the sheriff, and he may plead it (*p*).

So if it be broke by the king's enemies.

So if the prison is broke by the *king's enemies*, this shall excuse the sheriff, for he can have no remedy over against them.

But if by rebels, &c. the king's subjects.

But if the prison is broke by rebels and traitors, the king's subjects, this shall not excuse him, for he may have his remedy over against those (*q*).

Fresh pursuit, and retaken before action brought, excuses the sheriff.

If a prisoner in execution escapes without the assent of a sheriff, &c., and he make fresh pursuit, and retake him before any action brought against him, this shall excuse the sheriff (*r*).

But not after.

But if he retake him after the action commenced against him, this shall not excuse him; nor can it be pleaded to an action that was well attached before (*s*).

If fresh suit is made, and sheriff retakes before action.

So if a prisoner escape, and several days after, but as soon as the sheriff has notice of it, he makes fresh suit, and retakes him before an action brought, this shall excuse him (*t*).

(*k*) 2 Inst. 382. 9 Co. 98.

(*l*) 2 Lev. 159.

(*m*) Sav. 11. 15.

(*n*) 2 Lev. 160.

(*o*) 2 Jon. 61.

(*p*) Roll. Ab. 808.

(*q*) 4 Co. 84. Roll. Ab. 808.

(*r*) Cro. Jac. 657. Jon. 144.
Roll. Ab. 803. 2 Str. 873.

(*s*) Roll. Ab. 808, 809. Jon.
145. Cro. Car. 657.

(*t*) Roll. Ab. 809.

So the sheriff may plead that the prisoner escaped the sixteenth day of *December*, and that he made fresh suit, and retook him the seventeenth day of *December*, and retained him in execution ; for it is sufficient if he did all he could, though he lost sight of him in the night or otherwise (*u*).

Plea.

“ No *retaking on fresh pursuit* shall be given in evidence
 “ on the trial of an issue in an action of escape against the
 “ marshal or warden, or their respective deputy or deputies,
 “ or against any other keeper or keepers of any other pri-
 “ son or prisons, unless the same be specially pleaded ;
 “ nor shall any special plea be taken, received or allowed,
 “ unless oath be first made in writing by the marshal, &c.
 “ against whom such action shall be brought, and filed in
 “ the proper office of the respective courts, that the pri-
 “ soner, for whose escape such action is brought, did,
 “ without his consent, privity or knowledge, make such
 “ escape ; and if such affidavit shall at any time afterwards
 “ appear to be false, the marshal, &c. shall be convicted
 “ thereof by due course of law, and such marshal, &c. shall
 “ forfeit the sum of 500 l.”

Plea of fresh
 pursuit and re-
 caption by
 statute.

Affidavit to
 be annexed
 to the plea.
 8 & 9 W. 3.
 c. 26. s. 6.

In case of *voluntary* escapes, the gaoler cannot retake the prisoner (*x*).

But in the case of *negligent* escapes, the gaoler may retake the prisoner (*y*).

So it seems that an action against the sheriff for an escape on *mesne* process may be defeated by putting in bail in the original action, though after the expiration of the time allowed for putting it in, and even after the action for the escape is brought (*z*). But the court ordered the allowance of bail who had justified after the commencement of an action for an escape to be set aside, that the action might proceed, and agreed, “ that bail not justified in due time, was as if no bail had been put in.” (*a*)

Proceedings
 stayed, if bail in
 original action
 be put in.

To the action on the case for the escape the defendant may plead not guilty (*b*).

That he was rescued after an arrest on *mesne* process (*c*).

To an action of debt, *nil debet*. 2. And to an action for a *negligent* escape, that he escaped against his will,

Pleas to actions
 for escapes.

(*u*) Rol. Abr. 809. Dalt. Sh.
 563.

(*z*) 1 Esp. 87. 2 B. & P. 35. 246.

(*a*) How v. Lacy, 1 Taunt. 119.

(*x*) 2 Wils. 295.

(*b*) Com. Dig. 222. 2 Wils. 294.

(*y*) 2 Str. 908.

(*c*) Lut. 130. 3 Lev. 46.

and that he made *fresh pursuit* and retook him before action commenced (*d*).

In an action for an escape on mesne process the return is not conclusive; and if the copy of the writ contain also a copy of the return indorsed, the plaintiff cannot insist upon its being read as part of the document (*e*).

Sheriff's Redress.

Sheriff may have action against the escaper.

If the party in custody, on *execution* or *otherwise*, escapes, the sheriff may have trespass on the case against him, for the sheriff is liable over to the plaintiff in the first action (*f*).

In case of a voluntary escape, sheriffs cannot recover against the defendant in the original action.

But it seems that in the case of a voluntary escape, or where an officer permit a prisoner to go at large on his promise to repay the debt, and the prisoner escapes, the sheriff or other officer cannot recover, in an action for money paid, the sum which he has been compelled to pay to the plaintiff in the original action (*g*).

A sheriff's officer who pays debt and costs may recover it.

A sheriff's officer who discharges a defendant on payment of the sum sworn to and costs, and is afterwards obliged to pay the interest, which was insisted on, may recover it from the defendant as money paid to his use (*h*).

In Criminal Matters.

Escape by the party himself.

As all persons are bound to submit themselves to the judgment of the law, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice, before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment (*i*).

Escape by a private person.

That wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape if he suffer him to go at large before he hath discharged himself of him, by delivering him over to some other who by law ought to have the custody of him. And the law is generally the same in relation to *escapes* suffered by *private persons* as by *officers* (*k*).

(*d*) 2 T. R. 126.

(*e*) *Adey v. Bridges*, 2 Stark. N. P. C. 143.
N. P. C. 189.

(*f*) Cro. El. 231.

(*g*) 8 East, 171.

(*h*) *Cordron v. Messarine*, Peake's

(*i*) 2 Haw. 122.

(*k*) *Ib.* 138.

To make it an escape, there must be an actual arrest ; and therefore if an officer, having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape (*l*).

Escape from an officer, there must be a previous arrest.

Such arrest also must be justifiable ; for if it be either for a supposed crime, where no such was committed, and the party never indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular *mittimus* as will neither *justify* the *arrest* nor *imprisonment*, the officer is not guilty of an escape by suffering the prisoner to go at large (*m*).

And justifiable, if for a supposed crime where none committed, and party never indicted nor appealed, or an irregular *mittimus*, if prisoner escapes,

the officer is not guilty of an escape.

And as the imprisonment must be justifiable, so it must also be for a criminal offence.

And for a criminal offence.

Where a party convicted of a conspiracy, and committed to the custody of the marshal, escaped after the expiration of his sentence, but before payment of the fine, held that the marshal might retake him at any time whenever he could, and detain him until payment, and that even if the escape were voluntary.

And if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, though the judgment were that he be discharged *paying his fees*, so that they be not paid, the first imprisonment continuing lawful as before ; for inasmuch as he is detained, not as a criminal, but only as a debtor, his escape cannot be more criminal than that of any other debtor ; yet if a person convicted of a crime be condemned to imprisonment for a certain time, and also *till he pay his fees*, and he escape after such a time is elapsed without paying them, perhaps such escape may be criminal, for that it was part of the punishment that the imprisonment be continued till the fees should be paid ; but it seems that this is to be intended where the fees are due to *others*, as well as to the *gaoler*, for otherwise the *gaoler* will be the only sufferer by the escape, and it will be harsh to punish him for suffering an injury to himself only, in the non-payment of a debt in his power to release (*n*).

And detained only for fees, not criminal to suffer escape.

(*l*) 2 Haw. 129.

(*m*) *Ib*.

(*n*) Butt v. Jones, 1 Gow. N. P. 99. 129, 130.

Too much
liberty.

To suffer a prisoner to have greater liberty than the law allows is an escape. If a gaoler or other officer shall license his prisoner to go abroad for a time, and to come again, this is an escape, though he return again (*o*).

Losing sight of
prisoner an
escape.

If the gaoler so closely pursues the prisoner who flies from him that he retakes him without losing sight of him, the law looks on the prisoner so far in his power all the time as not to adjudge such a flight to amount at all to an escape; but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems to be guilty, in strictness, of an escape. And if he kill him in the pursuit, he is in like manner guilty of an escape, though he never lost sight of him, and could not otherwise take him (*p*).

And if he kill
him in the
pursuit.

Voluntary and
negligent
escapes.

There can be no doubt but that wherever an officer, who hath the custody of a prisoner charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him either from his trial or execution, he is guilty of a voluntary escape, and thereby involved in the guilt of the crime of which the prisoner was guilty and stood charged with (*q*). And it seems to be the opinion of Sir *M. Hale*, that in some cases an officer may be judged guilty of such escape who had not such intent, but only means to give his prisoner that liberty which by the law he hath no colour of right to give him (*r*).

The gaoler on
trial not pro-
ducing the
prisoner, a
conviction.

If the prisoner be of record in a court, and the gaoler being called cannot give an account where he is, this is a conviction of an escape; but it seems not a conviction of a voluntary escape, unless the gaoler confesseth it; and the gaoler may be fined in such a case, but not convicted of felony without indictment or presentment (*s*).

Felony to be
tried before
the escape.

The keeper who voluntarily suffers the escape cannot be arraigned for such an escape as for felony until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and the keeper, because the prisoner is a stranger thereto; yet he may be indicted and tried, for it is as a misprision before the attainder of the principal (*t*).

(*o*) Dalt. c. 159.

(*p*) 2 Haw. 130.

(*q*) 2 Inst. 592.

(*r*) 2 Haw. 130.

(*s*) 1 H. H. P. C. 599. 603.

(*t*) 2 Haw. 135. 2 Inst. 591, 592.

Whoever *de facto* occupies the office of gaoler is liable to answer for such as escape ; and it is no way material whether his title to the office be legal or not (*u*). A sheriff is as much liable to answer for an escape suffered by his bailiff as if he had actually suffered it himself, and the court may charge either the sheriff or bailiff for such an escape ; and if a deputy-gaoler be not sufficient to answer a negligent escape, his principal must answer for him : but if the gaoler who suffers an escape have an estate for life or years in the office, it is not agreed how far he in reversion is liable to be punished (*x*).

Negligent escape.

1. If a felon escapes before arrest, it is not punishable in him as felony ; but for the flight he forfeits his goods, when presented (*y*).

Punishment of escape before arrest.

2. If a private person arrest a felon, and he escape by force from him, the township shall be amerced ; but it seems it excuseth the party, because he cannot raise the power to assist him ; but if a constable or other officer hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself doth not wholly excuse him, because he may take sufficient strength to his assistance (*z*).

Of escape by a private person.

3. Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence (*a*).

Of a negligent escape.

And it seems to be the better opinion, that the sheriff is as much liable to answer for a negligent escape suffered by his bailiff as if he had actually suffered it himself, and the court may charge either the sheriff or bailiff for such an escape ; and if a deputy-gaoler be not sufficient to answer a negligent escape, his principal must answer for him (*b*).

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it ; and therefore it is lawful in the gaoler to hamper them with irons to prevent their

(*u*) 2 Hawk. P. C. 135.

(*z*) 1 H. H. 601.

(*x*) Ib. 135, 136.

(*a*) 2 Haw. 136, 139. 1 H. H. 600, 604.

(*y*) Hale's Pl. 111.

(*b*) 2 Haw. 135.

escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to take them that escape (*c*).

Voluntary escape, how far criminal.

4. It seems to be generally agreed, that a voluntary escape, suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass (*d*).

If act done is not felony.

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, but the officer may be fined to the value of his goods (*e*).

Also a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner as if he was never so rightfully entitled to such custody; for that the crime is in both cases of the same ill consequence to the public; and there seems to be no reason that a wrongful officer should have more favour than a rightful, and that for no other reason but because he is a wrongful one (*f*).

Principal only fineable.

But it seemeth to be clear, that no one is punishable as for felony for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another (*g*).

Felony in gaoler, but not his principal.

And therefore, although in all civil causes the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler that was immediately trusted with the custody, and not in the sheriff (*h*).

Escape must be voluntary in him who permitted it.

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, though it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him in trusting such a person with the custody of his prisoners that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer, for the miscarriage of his gaoler (*i*).

(*c*) 1 H. H. 601.

(*d*) 2 Haw. 131.

(*e*) Dalton.

(*f*) 2 Haw. 134.

(*g*) 2 Haw. 135.

(*h*) 1 H. H. 597.

(*i*) 1 H. H. 597, 598, 599.

But although the felony for which a man is committed be not within clergy, yet the person who voluntarily suffers him to escape shall have the benefit of clergy.

By the 16 *Geo.* 2,

“ If any person shall assist any prisoner to attempt his escape from any gaol, though no escape be actually made, if such prisoner was then attainted or convicted of treason or felony (except petty larceny), or lawfully committed, or detained in any gaol, for treason or felony, (except petty larceny), expressed in the warrant of commitment, he shall be guilty of felony, and be transported for seven years; and if such prisoner was then convicted of or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or was then in gaol for debt amounting to 100*l.*, he shall be guilty of a misdemeanor, and be liable to fine and imprisonment.”

“ And if any person shall convey, or cause to be conveyed any *disguise, instrument or arms*, to any prisoner in gaol, or to any other person there for his use, without consent of the keeper, such person, although no escape or attempt be actually made, shall be deemed to have delivered such disguise, instrument or arms, with an intent to assist such prisoner to escape, or attempt to escape; and if such prisoner was then attainted or convicted of treason or felony (except petty larceny), or lawfully detained in gaol for treason or felony (except petty larceny), expressed in the warrant of commitment, he shall be guilty of felony, and be transported for seven years; but if the prisoner was then convicted or detained for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or for debt amounting to 100*l.*, he shall be guilty of a misdemeanor, and liable to fine and imprisonment.”

“ And if any person shall assist any prisoner to attempt to escape from any constable, or other person, who shall have the lawful charge of him, in order to carry him to gaol, by virtue of a warrant of commitment of treason or felony (except petty larceny), or if any person shall assist any felon to attempt his escape from on board any *boat or vessel carrying* felons for transportation, or from the contractor for the transportation of such felons, or his agents, he shall be guilty of felony, and be transported for seven years. Offence to be prosecuted within a year.”

The 9 *Geo.* 4. subjects persons guilty of assaults on

Clergy.

c. 31.

A person's assisting a prisoner to escape, deemed guilty of felony.

Where deemed a misdemeanor.

Persons conveying any disguise, &c. to help an escape, without the knowledge of the keeper, of one attainted of treason or felony, the offender deemed guilty of felony, and transported. But if detained for petty larceny, or for debt amounting to 100*l.*, guilty of a misdemeanor.

To assist any person to escape from a constable being charged with treason or felony, or from any boat, &c. carrying felons for transportation, the offender deemed guilty of felony.

c. 31. s. 25.

any peace officer, in the execution of his duty, in order to prevent the apprehension or detainer of a party liable to be apprehended or detained by law for any offence, to be imprisoned in the house of correction, and with or without hard labour, for any term not exceeding two years, and may be required to find sureties for keeping the peace.

13 Ed. 1. c. 4.

In criminal cases, town amerced.

By the statute of *Winton*,

"If murder or homicide be done in a walled town, &c.
"and the offender escapes, the town shall be amerced." (*k*)
So *London* was (*l*).

c. 8.

A marshal permitting an escape by bail, imprisoned.

By 5 *Ed.* 3,

"A marshal who permits the escape of indictes or appellees in his custody, by bail or without bail, shall be imprisoned for half a year, and ransomed at the will of the king."

c. 10.

A fine for negligent escape of a person indicted for high treason, &c.

By the 19 *H.* 7,

"A fine for a negligent escape of any indicted for high treason shall be one hundred marks at least; if committed for suspicion of high treason, forty pound; if indicted for murder or petit treason, twenty pound; if for suspicion of these, or indicted for other felony, ten pound; if not indicted, five pound. And if the gaoler be not sufficient, the sheriff shall answer for his neglect (*m*)."

If gaoler not sufficient.

REPLEVIN.

Sheriff's Duty.

What a *replevin* lies for.

REPLEVIN is a re-delivering to the owner, by the sheriff, of his cattle or goods distrained upon any cause, upon surety that he will pursue the action against him that distrained; and if he pursue it not, or if it be adjudged against him, then he who took the distress shall have it again, and for that purpose may have a writ *de retorno habendo* (*n*).

For what it does not lie.

It does not lie of hounds, hawks, monkies, apes, thrushes, popinjays, &c., which are *feræ naturæ*, for the property is not properly known, and yet trespass lies thereof; and so of a mastiff (*o*); nor of conies (*p*), nor of charters (*q*), for they are inheritances, and belong to the heir.

(*k*) 7 Co. 7. a.
(*l*) Cro. Car. 252.
(*m*) Hawk. 113.
(*n*) Co. Litt. 145. b.

(*o*) Br. Prop. pl. 44. Br. Replevin, 64.
(*p*) Godb. 124. pl. 144.
(*q*) Br. Grant, pl. 81.

12 H. 8. 3, 4.

4 H. 7. 10.

But it lies of such things in which he has a qualified property, though he has not therein an absolute property, as of things wild by nature, which are made tame, or are reclaimed, so long as they continue in that condition they belong to the person who has the possession of them (*r*). It lies of a swarm of bees; of iron belonging to a mill (*s*); or a foal, calf, &c. (*t*). For a ship, so of the sails (*u*).

For what it does lie.

If the beasts of divers several men be taken, they cannot join in a replevin, but every one must have a several replevin (*x*). Except they are joint-tenants, or tenants in common.

When to have a separate replevin.

Although one distress is put into several pounds, yet one replevin shall serve; otherwise if it be in divers counties, or several franchises, where there ought to be several replevins (*y*).

When one.

Replevin lies of all goods and chattels, whether they be live cattle or dead chattels (*z*).

It lies of all goods, &c.

He who brings a replevin ought to have the property of the cattle or goods in him. But a special property is sufficient. As if goods be in his custody as a pledge, or for the manuring of his land. So a lord may have a replevin for the goods of his villein; for his action of replevin amounts to a claim, and vests the property in him (*a*). A husband for the goods of his wife *dum sola*. An executor or administrator for the goods of his testator (*b*), taken in his life-time.

But he must have property in him.

And replevin lies against him who takes the goods, and also against him who commands the taking; or against both (*c*). So it lies against him who takes damage feasant, if he detains after amends tendered (*d*).

It lies against him who takes the goods.

Replevin does not lie against him who takes goods beyond sea, though he afterwards import the goods hither (*e*). Nor does it lie for goods taken in execution; nor for goods seized for a debt due to the king, without his command, or that of the barons of the Exchequer (*f*). So it does not lie for goods seized by a warrant from a justice of peace, upon conviction for destruction of

But not if taken beyond sea.

Nor in execution.

Nor if seized by a warrant from a justice.

(*r*) 2 Roll. Abr. 430. Godb. 124.

(*s*) F. N. B. 68. 98.

(*t*) 1 Sid. 82. Bro. 41.

(*u*) Ray. 232. Moor. 110.

(*x*) Co. Litt. 145. b.

(*y*) Noy, 52.

(*z*) F. N. B. 68. D.

(*a*) Co. Litt. 145. b. F. N. B. 69.

(*b*) 1 Sid. 81.

(*c*) 2 Rol. 431, l. 5.

(*d*) F. N. B. 91.

(*e*) Show. 91.

(*f*) Mod. 672.

If under-sheriff grants such a replevin, liable to be attached.

The mode of contesting the regularity of a distress is by replevin. The old common law was by writ.

52 H. 3. c. 21.

Now, the sheriff to deliver the distress taken without let or gainsaying.

Sheriff may deliver, by parol or precept, the distress.

And may take a plaint for that purpose out of his county court.

c. 12.

To make four deputies.

game (*g*). Nor for goods distrained on a conviction for deer-stealing. And if the under-sheriff grants it, an attachment shall go against him (*h*). Nor for goods distrained for a fine imposed on an officer by commissioners of land-tax (*i*). Nor for goods taken under a distress in the nature of a statutory execution (*k*).

The regular way of contesting a distress taken wrongfully, and without sufficient cause, is by action of *replevin*; and formerly the party had no other process by the old common law than by a writ of *replevin*, *replegiare facias*, which is issued out of Chancery, commanding the sheriff to deliver the distress to the owner, and afterwards to do justice in respect of the matter in dispute, in his own county-court. But this being a tedious method of proceeding, the beasts or other goods were long detained from the owner, to his great loss and damage. For which reason the statute of *Marlbridge*, directs,

“That if the beasts of any person be taken, and wrongfully withholden, the sheriff, after complaint made to him thereof, may deliver them without let or gainsaying of him that took the beasts, if they were taken out of liberties; and if the beasts were taken *within any liberties*, and the *bailiff of the liberty will not deliver them*, then the sheriff, for default of those bailiffs, shall cause them to be delivered.”

By this statute, the sheriff, upon a plaint made unto him, without writ, may, either by parol or precept, command his bailiff to deliver the beasts or goods, that is, to make replevin of them; and the sheriff may take a plaint out of the county-court, as it would be inconvenient and against the scope of the statute that the owner, for whose benefit the statute was made, should tarry for his beasts until the next county-court, which is holden from month to month. And by this act the sheriff may hold plea in the county-court of *replevin* by plaint, though the value be of 20*l.* or above. But the sheriff cannot be compelled to enter a plaint; if not done the replevin-bond is forfeited, and he may be called upon to assign it (*l*).

And for the greater ease of the parties, by 1 *Ph. & M.* it is provided,

“That the sheriff shall make at least four deputies in each county, for the sole purpose of making replevins.”

(*g*) 2 Mod. 208, 9.

(*h*) Str. 1184.

(*i*) Bunb. 14.

(*k*) *Wilson v. Weller*, 1 T. & Br. 57.

(*l*) *Boyle ex parte*, 2 Dow. & Ry. 13.

And the statute gives a penalty of 5*l.* a month for every month he neglects.

The replevin clerk to the sheriff must bring the action alone for the expenses of preparing the replevin-bond, and cannot join his partner, though the business in fact be done in their office (*m*); and a party acting only as replevin clerk, having never been appointed, is not a person within the statute (*n*).

When the sheriff makes replevins, he ought to take two kinds of pledges, 1st, "That the party replevying will pursue his action against the distrainer," for which purpose he puts in *plegios de proseguendo*, pledges to prosecute. And 2d, That if the right be determined against him, he will return the distress again; for which purpose he is bound to find pledges to make return, if return shall be adjudged, *plegios de retorno habendo*, &c.

To take two kinds of pledges.

And the sheriff may issue his replevin at any time; for it would be inconvenient to make the parties wait till the county-court day (*o*)

By 13 *Ed.* 1.

c. 2.

"Sheriffs or bailiffs from thenceforth shall not only receive of the plaintiff pledges for the pursuing of the suit, before they make deliverance of the distress, but also for the return of the beasts, if return be awarded; and if any take pledge otherwise, he shall answer for the price of the beasts; and the lord that distrains shall have his recovery by writ, that he shall restore to him so many beasts or cattle; and if the bailiff be not able to restore, his superior shall restore."

The statute directs pledges for pursuing the suit, and return of the beasts.

In the construction hereof, it has been resolved, that if the sheriff returns *insufficient* pledges, he shall answer according to the statute; for insufficient pledges are no pledges in law: and such pledges must not only be sufficient in estate, viz. *capable to answer in value, but likewise sufficient in law*, and under no incapacity; and therefore *infants, femmes covert, persons outlawed, &c.*, are not to be taken as pledges, nor are all persons *politic, or bodies corporate* (*p*).

In construction hereof, it has been resolved that if he takes insufficient pledges he shall answer.

Infants, &c. not to be taken.

And for the greater security of persons distraining for rent, by 11 *Geo.* 2. it is enacted,

c. 9.

"That sheriffs and other officers having authority of

Sheriffs, &c. having autho-

(*m*) Brandon v. Hubbard, 2 Br. & B. 11.

(*o*) Co. Litt. 145. *b*.

(*p*) Co. Litt. 145. 2 Inst. 340.

(*n*) 1 Ch. R. 196.

10 Co. 102.

ity to grant replevins, shall for distress, if for rent, take bond in their own name from the plaintiff

Conditioned for prosecuting the suit with effect, and for return of goods if awarded.

And shall assign such bond without stamp, in presence of two witnesses.

When may be assigned.

When not assignable.

Sheriff obliged to grant replevins, and officer who takes the goods is not liable to trespass, unless, &c.

Misbehaviour by sheriff, &c. subject to K. B.

The end of distress is to compel a satisfaction.

Answered by taking sufficient pledges.

“granting replevins shall, in every replevin of a distress for rent, take, in their own names, from the plaintiff and two sureties, *a bond in double the value of the goods distrained*, (such value to be ascertained by the oath of one or more witnesses not interested, which oath the person granting such replevin is to administer), and condition for prosecuting the suit with effect and without delay, and for returning the goods, in case a return shall be awarded before any deliverance be made of the distress; and such sheriff or officer taking such bond shall, at the request and cost of the avowant, or person making cognizance, assign such bond to the avowant, &c. by indorsing the same and attesting it under his hand and seal in the presence of two witnesses, which may be done without any stamp, provided the assignment be stamped before any action brought thereon; and if the bond be forfeited, the avowant, &c. may bring an action thereupon in his own name; and the court may, by rule, give such relief to the parties on such bond, as may be agreeable to justice; and such rule shall have the effect of a defeazance.”

The bond may be assigned, if the plaintiff in replevin do not appear, at the county-court *next after* the giving the bond; and he may sue on the bond as assignee of the sheriff in the superior courts, though the replevin be not removed out of the county-court (*q*).

If distress be not made *for rent* the bond is not assignable; but the party may apply to the sheriff for the bond, and to be at liberty to sue in his name.

The sheriff is obliged to grant replevins in all such cases as they are allowed of by law; and the officer who takes the goods by virtue of a replevin, issuing for what cause soever, is not liable to an action of trespass, unless the party in whose possession the goods were claims property in them. And that in all cases of misbehaviour by the sheriff or other officers in relation to replevins, they are subject to the control of the king's superior courts, and punishable by attachment for such misbehaviour (*r*).

As the end of all distresses is to compel the party distrained upon to satisfy the debt or duty owing from him, this end is as well answered by such *sufficient sureties* as by retaining the very distress, which might frequently occasion great inconvenience to the owner, and that the law never wantonly inflicts.

(*q*) *Dias v Freeman*, 5 T. R. 195.

(*r*) *Carth.* 381.

If the sheriff neglects to take a replevin-bond, the court will not grant an attachment against him, but leave the party to his action against the sheriff (*s*). Sheriff neglects to take a bond.

And he is justified in taking a person who appears to the world to be a responsible person, unless he has the means of knowing otherwise, or neglects to use them, when, if they prove eventually insufficient, he will be liable (*t*).

If the sheriff take a replevin-bond with only one surety, and he is sued for taking insufficient pledges, he can only recover a moiety of the damages from such surety; and *semble*, such bond is not assignable, not being conformable to the statute (*u*).

Where actions were brought against the sureties, which failed, without notice to the sheriff, held that he was not liable to the costs; but *semble*, in some cases he may be liable (*x*).

The sheriff, on receiving such security, is immediately to make his precept, directed to his officers, commanding them to replevy, and cause to be delivered the cattle, goods or chattels so taken into the possession of the party so distrained upon; and if the distress be conveyed into any house, park, castle, or other place of strength, and the party who distrains refuses to deliver them to be replevied, the sheriff may take the *posse comitatus*, and on request and refusal may break open the same, and make deliverance.

Sheriff, receiving security, is to make precept to his bailiff to deliver.

If distress conveyed into a place of strength, &c. and refusal to deliver, he may take *posse comitatus*.

3 Ed. c. 17.

If the sheriff be shown a stranger's goods, and he takes them, trespass lies (*y*).

If shown a stranger's goods.

He cannot break an inclosure and enter, where he may enter by the open gate (*z*).

Cannot break inclosure if gate open. 20 H. 6. c. 28.

He may return, that no person came to show, &c., or a delivery; but not that the defendant, *non cepit*, the cattle (*a*).

May return that no person came to show, &c.

If the plaintiff in replevin proceeds before the sheriff in his county-court, if any thing touching the freehold comes in question, the sheriff can proceed no further, nor can any such proceeding be carried on in the hundred-court or court-baron (*b*). So where the king is

If the freehold comes in question, the sheriff can proceed no further.

(*s*) *Rex v. Lewis*, 2 T. R. 617.

(*x*) *Baker v. Garratt*, 3 Bing. 56.

(*t*) *Scott v. Waithman*, 3 Star. 169.

(*y*) 2 Roll. Abr. 552. Comb. 596.

(*z*) 2 Roll. Abr. 552.

(*u*) *Austen v. Howard*, 7 Taunt. 327.

(*a*) 1 L. Ray. 613. 1 Litt. 581.

(*b*) Co. Litt. 145.

In these cases removal must be by *re. fa. lo.*, and how the sheriff is to act.

party, or the taking is in right of the crown, the sheriff is to surcease (*c*). Therefore, in these cases, the plaintiff must be removed into one of the courts above by *re. fa. lo.*; if a court of record, by *certiorari*, &c.; and it is said that the writ of *recordari* must be openly read, and allowed in the same court, to the end that notice may be given thereof to the plaintiff in replevin, that he may appear at the day of the return thereof, and declare against the taker of his cattle, &c., otherwise the taker will have a return thereof.

c. 7.
If the plaintiff be nonsuit before issue joined.

By 17 *Car. 2.* if plaintiff shall be nonsuit before issue joined in replevin *for rent*, the defendant making a suggestion in nature of an avowry, or cognizance, for such rent, to ascertain the court the cause of distress, the court, upon his prayer,

Court to award an inquiry.

“ Shall award a writ to the sheriff of the county where
“ the distress was taken, to inquire by the oaths of twelve
“ good and lawful men of his bailiwick, touching the sum
“ in arrear at the time of such distress taken, and the value
“ of the cattle and goods distrained; and *thereupon the*
“ *sheriff shall inquire* of the truth of the matters con-
“ tained in such writ, by the oaths of twelve good and law-
“ ful men of his county:”

And upon the oath of such inquisition, the defendant shall have judgment to recover such rent, &c. N. B. Fifteen days notice is to be given to the plaintiff of the sitting of such inquiry. And when the plaintiff, after removal, becomes nonsuit, the bond is forfeited, and the avowant may elect to proceed by a writ *de retorno habendo*, or writ of inquiry, under 17 *Car. 2 (d)*.

c. 7. s. 2.

s. 3.

s. 3. gives the like remedy to the avowant upon a judgment given for him upon *demurrer*.

Entry of the
plaint in re-
plevin.

—— } At my county-court, held at, &c. the
to wit. } day of in the year of the reign
of our sovereign lord , by the grace of
God of the united kingdom of *Great Britain* and *Ireland*
king, defender of the faith, &c. before *A. E*, *K. E.*, *P. K.*
and *J. S.* suitors of the said court, (amongst other things)
it is entered, , to wit, *G. A.* complains of *H. H.* of
a plea of taking and unjustly detaining his goods and
chattels; and the pledges as well for prosecuting as for
returning the same goods and chattels, if return thereof
shall be adjudged, are *H. G.* of, &c. plumber, and *R. H.*
of, &c. glazier.

(c) *Brown*, 33.

(d) *Turner v. Turner*, 2 Br. & B. 107.

Know all men by these presents, that we *G. A.* of Bond in
in the county of gent. and *J. B.* replevin.
of the same place, gent. are held and firmly bound to
G. M. esq., sheriff of the county aforesaid, in the sum of
100 *l.* of lawful money of *Great Britain*, to be paid by the
said *G. A.* and *J. B.*, or their certain attorney, executors,
administrators or assigns, for which payment to be well and
truly made we bind ourselves, and each of us binds himself,
for the whole, and in gross, our heirs, executors and ad-
ministrators, firmly by these presents. Sealed with our
seals. Dated the day of

The condition of this obligation is such, that if the above Condition.
bounden *G. A.* do appear at my next county-court, to be
holden for the county of at on
the day of next, and do prosecute
there with effect his suit, which he hath commenced against
H. H. for the taking and unjustly detaining of two oxen, &c.
[here set forth the goods distrained], the cattle, goods and
chattels of him the said *G. A.*, and to make return of
the said cattle, goods and chattels, if return of the same
shall be adjudged; that then this present obligation shall
be void and of none effect.

——— } *G. M.* esq., sheriff of the county aforesaid, to Precept to
to wit. } the bailiff of the hundred of *K.* in the said deliver.
county, and to *John Doe* and *Richard Roe*, my bailiffs,
and to every one of them, jointly and severally, greeting :
Forasmuch as *G. A.* hath found me sufficient security, as
well for prosecution of his action against *H. H.* for un-
justly taking and detaining his cattle, goods and chattels,
and which the said *H. H.* takes and unjustly detains as is
alleged, as also for return thereof, if return thereof should
be adjudged; Therefore I command you, and every of
you, jointly and severally, that upon the behalf of the said
G. A., you replevy and deliver to the aforesaid *G. A.* his
said cattle, goods and chattels, and that you immediately
summon the said *H. H.* to appear at the next county-court
to be holden at , in and for the said county, to
answer the aforesaid *G. A.* in the plea aforesaid; and in
what manner you shall execute this precept certify to me
at the said next county-court to be held at the time and
place aforesaid, under the peril incumbent. Given under
the seal of my office, this day of in the
year of our Lord

——— to wit. By virtue of a warrant from the sheriff of the Summons to
county of to me directed, I summon you to appear the defendant
at the next county-court to be holden at in and in replevin.

for the county aforesaid, to answer *G. A.* in a plea of taking and unjustly detaining his cattle, goods and chattels.

Dated the day of 18
To Mr. *C. D.* *H. F.* bailiff.

The sheriff of *Middlesex* makes use of this form :

To A. B. my Bailiff.

Precept to deliver in Middlesex.

Middlesex, to wit. When *G. A.* hath found me security as well to prosecute his plaint as to return his goods and chattels, to wit [stating them] which *H. H.* hath taken and unjustly detained, as it is said, if return thereof shall be adjudged, then in behalf of our lord the king, and by virtue of my office, I command you that, without delay, you replevy and deliver the said goods and chattels to the said *G. A.*, and that you immediately summon the said *H. H.* to appear at the next county-court to be holden at the house known by the name of the sheriff's office, in

in and for the said county, to answer the aforesaid *G. A.* in the plea aforesaid ; and in what manner you shall execute this warrant forthwith make known to me. Dated the day of in the year of our Lord 18

} Sheriff.

Insufficient Pledges.

If sheriff takes insufficient pledges.

If the sheriff takes insufficient pledges, he, the undersheriff, and the replevin clerk, (that is, the officer appointed to make replevins under the stat. 2 *Ph. & M.*) are all liable to the defendant who has judgment *de ret. hab. (e)*. *Semble*, a party generally reputed responsible is sufficient ; but it is a question for the sheriff first, and afterwards for the jury, to say if the replevin clerk has conducted himself with due caution (*f*). And it was held, on solemn argument, that the plaintiff cannot recover damages *beyond the value of the distress taken (g)*.

Some evidence must be given by the plaintiff of the insufficiency.

It is said some evidence must be given by the plaintiff of the *insufficiency* of the pledges or sureties ; but very slight proof is sufficient to throw the proof on the sheriff ; for the sureties are known to him, and he is to take care that they are sufficient (*h*).

(*e*) *Richards v. Acton*, 2 Bl. R. 1220. (*g*) *Yea v. Lethbridge*, 4 T. R. 433.
Prowse v. Pattison, Bull. N. P. 60.

(*f*) *Sutton v. Waite*, 7 Moore, 60. (*h*) *Sanders v. Darling*, Bull. N. P. C. P. 27. See also *Hindle v. Blaydes*, 193. n. (*t*).
5 Taunt. 225.

Proof that they were in debt, and upon application for payment refused to pay, is sufficient evidence of their insufficiency (*i*).

The remedy is by action, and not by motion in court (*k*); but the verdict in replevin being merely for a return of the goods, the sheriff's liability cannot be extended beyond their value (*l*).

Know all men by these presents, that I, *G. M.* Esq. sheriff of the county of _____ have, at the request of the above-named *H. H.* the avowant in this cause, assigned over unto him the said *H. H.* this *replevin* bond, pursuant to the act of parliament in that case made and provided. *In witness* whereof, I have hereunto set my hand and seal of office, this _____ day of _____ 18 _____

Sealed, &c.

Assignment of replevin-bond.

To be witnessed by two witnesses.

—— ss. *G. M.* Esq. High sheriff of the said county, to all and singular my bailiffs of the said county, greeting; Forasmuch as *W. B.* hath come before me, and found me sufficient security, as well to prosecute his complaint as to return his cattle, if return thereof shall be adjudged; and therefore, by virtue of my office, I have often commanded you, and every of you, that you, or some one of you, shall cause to be *replevied* and delivered to the aforesaid *W. B.* his, &c. which *J. C.* took and unjustly detains, (as it is said,) and you, upon my several precepts of *replevin* to you directed as aforesaid, have certified that the cattle, &c. aforesaid, are eloigned to places to you unknown, so that you could not have the view of them: Therefore I now command you and every of you, that you, or some one of you, take in *withernam* chattels to the value of the said cattle, &c. of the chattels of the said *J. C.* to be delivered to the said *W. B.* for his cattle aforesaid, taken and eloigned as aforesaid: and also that you put, by safe gages and pledges, the said *J. C.* so that he be and appear at my next county-court at *D.* (on such a day) to answer to the said *W. B.* of the plea aforesaid; and you are, or one of you is, to return an answer to this my mandate at my said next county-court. Given under the seal of my office, the _____ day of _____ in the year, &c.

A precept on a writ of *withernam*.

By virtue of this writ to me directed, in my full county, held at *F.* in the county of _____ the _____ day of _____ in the year of our Lord _____ I have caused the

Return to a writ of *re. fu. lo.*

(*i*) 6 Esp. 100.

(*k*) 1 New. R. 292.

(*l*) 3 Star. 169.

plaint to be recorded, which was in my county, without the king's writ between the parties within named, which record appears in the shedule hereunto annexed; I have the said record before his majesty, from *Easter-day* in one month within mentioned, wheresoever his majesty shall then be in *England*, under my seal, and the seals of *J. G.*, *M. H.*, *J. P.* and *S. W.*, four lawful knights of the said county who were present at the said record; I have prefixed the same to the said parties, that then they may be there ready to proceed in the said plaint as I am within commanded. The answer of

Then on a piece of parchment unstamped, write thus :

The plaint.

——— } At my county-court, held at, &c. in the said
to wit. } county, the day of in the year
of the reign of our sovereign lord by the
grace of God of the united kingdom of *Great Britain* and
Ireland king, defender of the faith, &c. before *A. E.*,
K. E., *P. K.* and *J. S.*, suitors of the said court (amongst
other things) it is entered, (ss.) *S. F.* complains of
J. M., of a plea of taking and unjustly detaining his goods
and chattels, as well for prosecuting as for returning the
same goods and chattels, if return thereof shall be ad-
judged, are *A. H.* of, &c. yeoman, and *T. H.* of, &c.
barber.

To *K. H.*

Summons of the
bailiff to the
defendant to
appear on the
recordari.

——— to wit. By virtue of a warrant from the sheriff of
the county of I summon you to appear at the
next county-court to be holden at the house known by
the name of the sheriff's office, in in and
for the said county, to answer *G. A.* in a plea of taking and
unjustly detaining of his goods and chattels.

A. B. bailiff.

Before the coming of this writ to me, the goods and
chattels within mentioned were eloigned and removed, by
the within named *C. D.*, to places to me unknown, there-
fore I cannot cause the same to be returned to the within-
named *A. B.* as I am within commanded.

By virtue of this writ to me directed, I have caused to
be delivered to the within-named *L.* his cattle within men-
tioned, as I am within commanded.

Return to a writ
of *retorno ha-
bend. elongatur*.

Return to a
writ of *second
deliverance*.

Pledges to prosecute, { *John Doe*
and
Richard Roe.

Summoners of the within-named *C. D.* are *D. K.* and *J. B.*
The answer of, &c.

Every *pone* is only a summons to command the sheriff to summon or prefix a day to the parties, plaintiff and defendant, that they appear *in banco*, &c. Return to a *pone* summoned.

RESCUE.

In Civil Cases.

RESCUE is taking away and setting at liberty, against law, a distress taken for rent, or services, or damage feasant; but the more general notion of rescous is “the forcibly freeing another from arrest,” or some legal commitment, which, being an high offence, subjects the offender not only to an action at the suit of the party injured, but likewise to fine and imprisonment at the suit of the king (*m*). Rescue, what.

By 2 *W. & M.* st. 1, it is enacted,

“That upon pound breach, or rescous of goods distrained for rent, the person grieved shall, in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his use.”

And what party is subject to.

c. 5. s. 5.

On pound breach or rescous of goods, party to have action on the case.

And it is held he shall recover treble costs (*n*).

If the sheriff arrests a person on *mesne* process, and he is rescued in going to gaol, the sheriff is not liable; for as the sheriff, if he meets the party against whom he has such process, is bound to arrest him if pointed out to him, so he cannot be supposed to have the *posse comitatus* then with him (*o*). And, in an action for a false return, it would be a good defence, that the party forcibly rescued himself, but not if he escaped from the negligence of the officer (*p*). When sheriff not liable, but may return the rescue.

In all cases of *mesne* process in cases of rescue, he shall be excused, being on the same principle. But if he be once in the walls of the prison after such arrest on *mesne* process, he shall in all cases be liable (except the rescue be by the king’s enemies, or the escape by reason of fire.) But the sheriff cannot return a rescue on process of execution (*q*), nor will it relieve him from his liability (*r*). When not

(*m*) Co. Lit. 160. F. N. B. N. P. 537. 4 Co. 84, a. 1 Roll. 226. Abr. 808.

(*n*) 1 Salk. 205.

(*q*) 1 Roll. Abr. 808.

(*o*) Cro. Jac. 419. Cro. El. 873.

(*r*) Nicholl v. Darley, 2 Y. & Jer. Ex. R. 399.

(*p*) Fermor v. Phillips, 1 Holt,

Party guilty of a rescue subject to a writ of rescous and to an action.

Also an attachment.

May be indicted.

Rescue on process from inferior court.

Rescue from any of the courts of Westminster without striking a blow, forfeits goods and profits of the land.
22 E. 3. c. 13.

Attachment will be granted against a peer.

But will grant no attachment, unless the sheriff returns the rescue.

c. 27. s. 15.
A penalty and imprisonment for resisting an officer in certain places.

The offence of rescuing persons on *mesne* process, or in execution after judgment, subjects the offender to a writ of *rescous*, or a general action of trespass *vi et armis*, or an action on the case, in all which damages are recoverable. Also it is the frequent practice of the courts to grant an *attachment* against such wrong-doers, it being the highest violence and contempt that can be offered to the process of the court(s); and an indictment will lie for a rescue (*t*).

An indictment for preventing an arrest on process issuing out of an inferior court, must state that the process was directed to the officer of the court (*u*).

He who rescues a prisoner from any of the courts at *Westminster-hall*, without striking a blow, shall forfeit his goods and the profits of his lands, and suffer imprisonment during life; but not lose his hand, because he did not strike (*x*). And see now the further penalties imposed by 1 & 2 *Geo.* 4, c. 88, and 9 *Geo.* 4, c. 31.

An attachment will not only be granted against a common person, but even against a peer of the realm, for rescuing a person arrested by due course of law; so that if the sheriff in any case return to the court that a person arrested, or goods seized, or possession of lands delivered by him, by virtue of the king's writ, were rescued or violently taken from him, &c., they will award an attachment against the rescuers. But they will not grant such attachment unless the officer returns the rescue; for it hath been found by experience that officers will take upon them to swear a rescous, where they will not venture to return one (*y*). A return of rescue to an attachment for not bringing in the body, is insufficient, unless it states it *vi et armis*, and that the arrest was made in his own county; but it need not state the names of the rescuers (*z*).

The 8 & 9 *W.* 3. inflicts a penalty of 30*l.* for resisting the officer in *Whitefriars*, &c., and the offender to suffer imprisonment and be set in the pillory. And if any *rescous* be made of any prisoner within any pretended privileged place there mentioned, the person making *rescous*,

(*s*) F. N. B. 226. 3 Bulstr. 205. (*x*) 3 Inst. 141.
Co. Lit. 161. Cro. Jac. 446. Hob. (*y*) 2 H. P. C. 153. 6 Mod.
180. Salk. 586. 141.
(*t*) Com. Dig. tit. Rescous, D. (*z*) Rex v. Sh. of Midd., 1 S. &
(*u*) 5 East, 301. B. 190.

or assisting the same, being convicted, shall forfeit 500 *l.*, and in default of payment, to be transported to the plantations for seven years; and any person harbouring a rescuer, knowing him to be such, to be transported for seven years.

Upon reading the return of a rescue, an attachment goes of course in the first instance; but it is never granted on affidavit of the fact (*a*). On reading the sheriff's return of a rescue, attachment of course.

It was formerly the constant course, upon the return, to set a certain fine of four nobles on each offender; but of late the court have fined according to their discretion, on the circumstances of the case (*b*). Formerly set a fine of four nobles.

But where a defendant was brought up on an attachment for rescuing a person arrested on a warrant for obstructing excise officers, *Ld. Kenyon* said, it was the invariable practice to put the defendant to answer interrogatories; but the prosecutor afterwards waived putting them, and the court passed judgment. The defendant in this case did not deny the facts charged in the affidavits (*c*). Obstructing excise officers.

Return of Rescous.

If the sheriff arrests the defendant on *mesne* process and the defendant be rescued by *J. S.*, he may return the rescue, and such return is good (*d*); but not where the defendant is rescued after he is put in prison, except by the king's enemies (*e*). If a rescue on mesne process.

If a *rescous* be made upon *mesne* process, the sheriff may return that the defendant was arrested, and rescued himself, and that *non est inventus* after (*f*); or that he and others rescued (*g*). What is a good return.

So the sheriff may return *mandavi ballivo*, who returned a *rescous* (*h*). *mand. balli.*

The return of a *rescous* ought to be certain, and therefore if it does not show where he was arrested, it will be insufficient: so if it does not show the place where he was arrested, for perhaps it was out of the county (*i*). Return of rescue ought to be certain.

(*a*) Rep. & Ca. Pr. C. P. 126. (*e*) Cro. Jac. 419. 1 Str. 435.
Bridger v. Colely, Tr. 5 Geo. 2, 5 Burr. 2814.

K. B. Young v. Payne, Salk. 586. (*f*) Kitch. 160. b. 2 Cro. 419.

(*b*) R. v. Minify, 1 Str. 642. (*g*) Kitch. 261. a.

(*c*) R. v. Horsley, 5 T. R. 362. (*h*) 2 Roll. 457. l. 5.

(*d*) Gilb. C. P. 23. (*i*) Yelv. 51. Mo. 422.

Necessary to show the year, &c.

It is necessary to show the *year, day*, and the *persons* who made the rescue (*k*).

If return of a bailiff of franchise.

If the sheriff makes the return of a bailiff of a franchise, he ought to show that he had the return of writs (*l*), and that the *rescous* was from such bailiff, and that it was *vi et armis* (*m*).

Ought to show person who arrested was his bailiff, &c.

It ought to show that the person to whom the sheriff directed his warrant was his bailiff, and for what cause the warrant was directed to him (*n*).

Sufficient that he made warrant.

It is sufficient to say, that he made a warrant to arrest, without saying under seal, for the word warrant imports it (*o*).

Sufficient that he was arrested, &c.

Sufficient that he was rescued out of the custody of a bailiff by virtue of a warrant to him made; for this is out of the custody of the sheriff (*p*).

That he was taken in the county.

That he was arrested in the county aforesaid, though it does not say '*within his bailiwick*'; for it shall not be intended out of it, if it be in the county (*q*).

Rescued from *A.* bailiff of a liberty, without saying he had return, &c.

That he was rescued from *A.*, bailiff of a liberty, to whom he directed his warrant, without saying that he had the return of writs; for it shall be intended the bailiff of the sheriff, and the words of a liberty rejected (*r*).

That several rescued him.

That several rescued him, without saying *et quilibet eorum se rescussit*, for it is in the affirmative (*s*).

Rescued though taken by the bailiff.

That he was rescued from the sheriff, though taken by the bailiff (*t*). But the return of a rescue out of the custody of the bailiff is bad, it should be out of *his* custody (*u*).

If warrant to two, arrest by one, return good.

If it appear on the return that the warrant was to two, and the arrest by one only, yet the return is good; for it is no exception in what relates to public justice (*x*).

That the bailiff arrested the defendant is good.

That the defendant being in my custody, is sufficient (*y*).

(*k*) Moor, 422. Palm. 563. *Sed contr.*, 1 Selw. & B. 190.

(*l*) Cro. El. 781.

(*m*) R. v. Midd. Sh., 1 Selw. & B. 190.

(*n*) Str. 155.

(*o*) 2 Jon. 197.

(*p*) 2 Jon. 197. Salk. 586. 2 Lev. 28.

(*q*) Yelv. 51.

(*r*) Cro. El. 781.

(*s*) 1 Vent. 2.

(*t*) Str. 417.

(*u*) Woodgate v. Knatchbull, 2 T. R. 155.

(*x*) Str. 117.

(*y*) Str. 225. Fost. 362.

The return cannot be traversed (*z*); but the rescuer may be admitted to give recognizances, to try false return against the sheriff: and if there be a verdict for plaintiff, the recognizance shall be discharged (*a*).

Return cannot be traversed.

The return of a rescue is of itself a conviction, and the court will grant an attachment upon it in the first instance (*b*).

Return of rescue a conviction of itself.

The execution of this writ appears in the schedule hereto annexed.

Return of rescue by several.

The answer of, &c.

By virtue of His Majesty's writ to me directed, and to this schedule annexed, I duly made my warrant, and directed the same to *A. S.* my bailiff, commanding him to take *W. C.* in the said writ named, if he should be found in my bailiwick, and him safely keep, so that I might have his body before our sovereign lord the king on the day and place in the said writ mentioned, and before the return thereof, to answer to *A. H.* in the plea and to the bill therein mentioned, which said bailiff, by virtue of my aforesaid warrant, afterwards, on the day of in the year of the reign of our lord the now king, at in the parish of in my county, arrested and took the body of the said *W. C.* according to my said warrant, and kept and detained him under such arrest and in custody as aforesaid, for want of bail to the said writ, from thence for the space of one hour then next following, and until the said *W. C.* and one *J. K.* of the same place, esq., *G. H.* of the same place, gent., and *L. M.* of the same place, gent., together with divers other persons to me and my said bailiff at present unknown, with *force and arms* (*c*), made an assault on the said *A. S.* my bailiff, and then and there beat, wounded and ill-treated him, so that his life was thereby greatly despaired of; and the aforesaid *W. C.* being so in custody, and under the said arrest as aforesaid, then and there out of my custody, and the custody of my said bailiff, against my will, and the will of my said bailiff, did forcibly take and rescue, and at his free will and pleasure set and permitted to go at large wheresoever he pleased, against the peace of our lord the now king. And he the said *W. C.* then and there with force and arms, against my will and the will of my said bailiff, unlawfully then and there rescued himself out of my

(*z*) 4 Burr. 2129. R. v. Elkins.

(*b*) Cas. T. Hard. 112. 2 Salk. 586. Say. R. 121.

(*a*) Barnes, 430.

(*c*) R. v. Sh. of Midd., 1 S. & B. 190; *supr.* 200. n. (*z*).

custody, and the custody of my said bailiff, against the peace of our said lord the king, and afterwards the said *W. C.* was not found in my bailiwick: therefore I cannot have the body of the said *W. C.* in the said writ named before the lord the king on the day and place in the said writ named.

The Answer of *John Denn*, Esq. Sheriff.

Another return of rescue, where defendant was arrested on horseback and rode down the bailiff.

By virtue of His Majesty's writ to me directed, and to this schedule annexed, I made my warrant, bearing date the day of in the year of the reign of his present majesty, directed to *L. M.*, my bailiff, commanding him that he should take *J. B.* in the said writ named, &c. [*as in the first return.*] By virtue of which said warrant, the said *L. M.* afterwards, and before the return of the said writ, to wit, on the day of in the year aforesaid, at *L. S.*, in the said county of *S.*, did take and arrest the within named *J. B.* who was then on horseback, and had and detained him in custody until the said *J. B.* afterwards, (that is to say) immediately afterwards, on the same day and year last aforesaid, at *L. S.* aforesaid, within my bailiwick, with force and arms, made an assault on the said *L. M.*, and then and there beat down and rode over the said *L. M.*, and then and there, against my will and consent, and against the will and consent of my said bailiff, rescued himself, and escaped from and out of my custody, and the custody of my said bailiff, against the peace of our lord the now king; and afterwards the said *J. B.* was not found in my bailiwick: therefore I cannot have the body of the within named *J. B.* before the lord the king on the day and place in the said writ mentioned, as I am within commanded.

The answer of, &c.

In Criminal Cases.

In criminal matters.

Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment, and it is generally the same offence in a stranger so rescuing as it would have been in a gaoler to have voluntarily permitted an escape: but upon voluntary escapes the principal must first be attainted before the rescuer can be punished, because it may turn out that there has been no offence committed (*d*).

Rescuing a person for felony, is so.

It seems agreed that the rescuing a person imprisoned for felony, is also felony by the common law (*e*).

(*d*) Fost. Cr. L. 344. 1 Hale, 607.

(*e*) 1 H. P. C. 606.

That a stranger who rescues a person committed for and guilty of high treason, knowing him to be so committed, is in all cases guilty of high treason, whether he knew that the prisoner was so committed or not (*f*). So the same for high treason.

To make a rescue felony, *Lord Hale* says, 1. That it is necessary that the felon be in custody, or under arrest for felony; and therefore if *A.* hinder an arrest, whereby the felon escapes, the township shall be amerced for the escape, and *A.* shall be fined for the hindrance of his taking; but it is not felony in *A.*, because the felon was not taken (*g*). To make it felony.

So to make a rescue felony, the party rescued must be under custody for felony, or suspicion of felony; and it is all one whether he be in custody for that account by a private person, or by an officer, or warrant of a justice; for where the arrest of a felon is lawful, the rescue of him is felony; but it seems necessary that he should have knowledge that the person is under arrest for felony, if he be in the custody of a private person. But if he be in custody of an officer, as *constable* or *sheriff*, there at his peril he is to take notice of it; and so it is if there be felons in a prison, and *A.*, not knowing of it, breaks the prison, and lets out the prisoners; though he knew not that there were felons there, it is felony (*h*). To make a rescue felony, the party rescued must be under custody for felony, &c.
Necessary to have knowledge that the person is under arrest for felony.

A person committed for high treason, who breaks the prison and escapes, is guilty of felony only, unless he lets others also escape whom he knows to be committed for high treason, not in respect of his own breaking of prison, but of the *rescous* of others (*i*). A person committed for high treason breaks the prison and escapes, is guilty of felony.

Wherever the imprisonment is so far groundless or irregular, or the breaking of a prison is occasioned by such a necessity, &c., that the party himself breaking prison is, either by the common law or by the statute *de frangentibus prisonam*, saved from the penalty of a capital offender, a stranger who rescues him from such an imprisonment is in like manner also excused, *et sic è converso* (*k*). If imprisonment of the person is groundless, rescue excused.

Return of a rescue of a felon by the sheriff against *A.* is not sufficient to put him to answer: for it is a felony, without indictment or presentment. Return of rescue of a felon by the sheriff not sufficient to put to answer; 25 E. 3. c. 4.

(*f*) St. P. C. II. Cro. Car. 583.

(*g*) 1 Hal. II. P. C. 606.

(*h*) 1 Hale, 606. Cro. Car. 583.

(*i*) 2 Haw. 110.

(*k*) Ib. 139.

c. 23. s. 5.

By 6 Geo. 1,

Rescuing felons
ordered for
transportation.

“ If any person shall rescue felons ordered for transportation, or assist them in making their escape, he shall be guilty of felony, and suffer death without benefit of clergy.”

9 Geo. 1. c. 28.

Rescuing persons arrested in the Mint, felony.

1 & 2 Geo. 4.
c. 88.

And where parties guilty of the offence of rescue would by law be guilty of a clergyable felony, subject to the punishment of imprisonment not exceeding one year, they are now punishable with seven years transportation, or imprisonment, or imprisonment and hard labour, for any term not exceeding three years, nor less than one.

9 Geo. 4. c. 31.
s. 25.

And persons guilty of assaulting any officer with intent to prevent the apprehension or detainer of parties liable to be apprehended or detained for any offence, may be punished with imprisonment in the common gaol or house of correction, with or without hard labour, for any period not exceeding two years, and may be also fined and required to find sureties for keeping the peace.

To be punished
by indictment,
and what it
ought to set
forth.

This offence is punished by indictment; and such indictment ought to set forth “ the special circumstances of the fact with such certainty as to enable the defendant to make a proper defence.” For no defect can be aided by the verdict (*l*). Therefore the day is material (*m*). But it is not necessary to allege the place where the rescue was made, for it is to be intended where the arrest was, there also was the rescue, without the word *ibidem* (*n*).

THE COUNTY COURT.

County court
incident to the
office of sheriff;
but not a court
of record;
holds plea for
under 40*s*.
6 E. 1. c. 8.

Exclusive juris-
diction.

THE *county-court* is the court of the sheriff (*o*). It is not a court of record, but may hold plea of debt or damages under the value of 40*s*. Over some of which causes, these inferior courts have, by the express words of the statute of *Gloucester*, a jurisdiction totally exclusive of the king's superior courts, providing,

“ That sheriffs shall plead pleas of trespass in their counties, as they have been accustomed to be pleaded; and that none shall have writs of trespass before justices unless he swear by his faith that the goods taken away were worth 40*s*. at the least.”

(*l*) Dy. 164. 1 Roll. Abr. 781.

(*m*) Moor, 55. Rast. Ent. 263.

(*n*) Cro. Jac. 345. 2 Bulstr. 208.

(*o*) 4 Co. 33.

This court may also hold plea of many real actions, such as dower, right patent, or right ward (*p*), and of all personal actions to any amount, by virtue of a special writ called a *justicies*; which is a writ issued out of the Chancery, empowering the sheriff, for the sake of dispatch, to do the same justice in his county-court as might otherwise be had at *Westminster* (*q*).

Holds plea of real actions, and personal actions by writ of *justicies*.

The freeholders of the county are the real judges in this court, and the sheriff is the ministerial officer. This great conflux of freeholders, which are always supposed to attend at the county-court, is the reason why all acts of parliament at the end of every session were wont to be there published by the sheriff; why all outlawries of absconding offenders are there proclaimed, 13 *El.*: and why all popular elections which the freeholders are to make, as formerly of sheriffs and conservators of the peace, and still of coroners, verderers, and knights of the shire, must ever be made *in pleno comitatu*, or in full county-court.

The freeholders are the judges; sheriff is the ministerial officer.

c. 3.

All acts formerly read, and outlawries there proclaimed, and all elections, &c. made in full county-court.

The sheriff acts in a judicial character in the county-court, and is therefore not responsible for the wrongful acts of his bailiff in the execution of process out of that court (*r*).

In ancient times, pleas of the crown, indictments of felony, trespasses, and other offences, were depending in the torne, as appears by *Glanvil* (*s*); by *Bracton* and *Britton* in divers places; and by *Fleta* (*s*), until the statute of *Magna Charta*, which says expressly,

In ancient times indictments, &c. were in this torne.

c. 17.

“That no sheriff shall hold pleas of the crown.”

And by 1 *Ed.* 4, it is ordained,

c. 2.

“That the sheriff, under-sheriffs, clerks, *viz.* county-clerks, “and their ministers, shall bring, present, and deliver all “indictments taken before them in their turns or law-days, “to the justices of the peace, at the next sessions of the “peace.”

But sheriff is now not to hold pleas of the crown, but deliver them to the justices, &c.

As this court hath of ancient times belonged to the sheriff, and incident to the office, the king cannot grant by letters patent the office of county-clerk, nor the fees, which of right belong to the sheriff (*u*).

Sheriff to appoint county-clerk.

(*p*) 4 Inst. 266. 3 Inst. 312.

(*s*) Lib. 1. c. 2, 3, 4.

(*q*) Finch, 318. F. N. B. 152.

(*t*) Lib. 2. c. 62.

(*r*) Tinsley v. Nassau, 1 M. & Malk. N. P. 52.

(*u*) Mitton's case, 4 Co. 32.

County-clerk to depute bailiffs, &c.

The county-clerk must be careful in deputing honest, able and sufficient men as bailiffs, for the executing of precepts issuing out of the court; and it is just cause of superseding them if they take unreasonable distresses, or more than the accustomed fees, or do not make return of their precept to the county-clerk, or the plaintiff's attorney. He must make the usual process, after the plaints entered against the defendants, directed to the sheriff's bailiff, to summon, attach or distrain the defendant by his goods, to appear at the next county-court after, to answer the plaintiff in the action.

County-clerks to make the usual process, &c.

When he adjourns the court, to appoint a day certain for the next.

At the adjourning of every court he must appoint a day certain for the next court, to the intent that the county may know at what time to resort thither, to have the writs of *exigent* and *proclamations* read.

When to be holden.

Holden from month to month.
9 H. 3. c. 35.
2 Ed. 6. c. 25.

This court is to be holden and kept from *month* to *month* on a *certain day*, and shall be no longer deferred. And the computation shall be by *lunar months* (*x*), and not *calendar*. And so within the *twelve shires of Wales*, the sheriffs shall keep their courts monthly. And so within the county palatine of *Chester*.

The necessity of keeping it monthly.

The necessity of keeping this court every month, and on a day certain, is by reason of the king's writ of *exigent*, which must be proclaimed or read there.

Coroners to sit.

And the coroners are to sit with the sheriff at every county-court, to give their judgments upon outlawries (*y*). But in *London*, the judgment upon outlawries is given by the recorder in the court of *Hustings* (*z*).

Courts in York held on Monday now to be held on Wednesday.
7 & 8 W. 3. c. 25. s. 9.

All county-courts held for the county of *York*, or any other county-courts that used to be held on *Monday*, shall be called and begun on *Wednesday*, and not otherwise.

At what Place.

May be kept in any place.

This court, by the common law, may be kept or holden in any place, at the pleasure of the sheriff or under-sheriff, so that it be within the county, if it be not appointed by statute in a place certain. As for instance, *Northumberland*, at the town of *Alnwick*. *Sussex*, at *Chichester* one time, *Lewes* at another, and so *alternis vicibus* for ever.

2 Ed. 6. c. 5.

19 H. 7. c. 24.

(x) 2 Inst. 71. (y) Dyer, 223. Finch, 116. (z) Co. Litt. 288, b.

Chester, in the shire-hall of the said county. And the sheriff's shire-courts in *Wales*: of the county of *Brecknock*, at *Brecknock*; of *Radnor*, at *New Radnor* and *Preston*; of *Montgomery*, at *Montgomery* and *Machynlleth*; of *Denbigh*, at *Wrexham*; and of *Monmouth*, at *Monmouth* and *Newport*, *alternis vicibus*.

Chester.
33 H. 8. c. 13.
Wales.

The sheriffs of the counties of *Wales* shall hold plea of *replegiari*, and all other suits and complaints *under 40 s.*, in their county or shire-courts, in like manner as all other sheriffs do within the realm of *England*.

Sheriffs of
Wales.
27 H. 8. c. 26,
34 H. 8. c. 26.

But if a plea be there by *justicies*, the sheriff ought to be there in person, and cannot make a deputy. For if he does, the proceedings will be *coram non iudice*, and void (*a*). But if the court is alleged to be held before the sheriff, it seems to be well.

Justicies.

28 H. 6. 34.

For to this court all persons dwelling within the county, being summoned, ought to appear, by reason of their residence in it; and if they do not appear according to summons, they are attached, or distrained by their goods, to answer the plaintiff in the suit. But no fine can be imposed on any offender, because it is *no* court of record (*b*).

To this court
all persons
dwelling in
the county
are to appear.

The style of the court is,

" ———, ss. The first court of the county of ———
" ———, Esq. sheriff of the county aforesaid, held at
" ———."

Style of the
county-court.

And the next court, "the second, and so forth."

It holds no suits of charters for lands, or for inheritance, or to make several complaints upon one entire debt, nor any action to compel one to render an account, though under 40 s.; because the sheriff cannot assign auditors, who are judges of the record; and this is no court of record (*c*). Nor can it hold plea of any debt due by record. Nor debt due on bond. Nor action of deceit, maintenance, or forgery of false deeds (*d*). Nor unless both defendant reside, and the cause of action arise, within the jurisdiction of the court, even for less than 40 s. (*e*); and where these circumstances do not concur, the action must be brought in the *superior court*.

What this
court does not
hold plea of.

(*a*) 2 Leon, 34. 210.

(*b*) 8 Co. 41. 60.

(*c*) 2 Inst. 380.

(*d*) Dalt. 412.

(*e*) 6 T. R. 175. 2 H. Bl. R. 29.
1 B. & P. 75.

Of the Proceedings by Action.

Holds plea
by plaint.

The county-court holds plea by plaint in debt, detinue, or other personal action (not being *vi et armis*) under the value of 40*s.* So if the debt was originally above 40*s.*, if the plaintiff by his declaration acknowledges the receipt of so much as reduces the debt under 40*s.* It may hold plea by plaint in *trespass*, if it be not *vi et armis*; as of a battery (*f*). So in replevin (*g*).

52 H. 3. c. 21.

Process.

Process in the county-court shall be by summons, attachment, and distress infinite in all personal actions by plaint or *justicies*, except in trespass. And in trespass it shall be by attachment and distress infinite.

Summons.

The summons may issue two or three days before the court-day (*h*), and shall be directed to the bailiff; and the sheriff shall make the precept in his own name, though the suitors are judges (*i*). And it shall be to the sheriff's bailiffs (*k*), not to *special* bailiffs. And if the defendant does not appear upon summons, an attachment shall go against him (and in trespass it is the first process) directed to a bailiff, that he put by safe and secure pledges &c. Upon which the bailiff attaches him by pledges, or his goods.

Attachment.

Or it is sufficient that he warns him to appear, if he be returned warned.

Distress.

If the defendant does not appear upon the attachment, a distringas shall go, by which the bailiff shall distrain the goods of the defendant, and keep them till he appears; and if he makes default they are forfeited. And so *distringas in infinitum* till the defendant appears. But a *capias* does not lie in this court.

Every plaint ought to be entered in writing, and the plaintiff or his attorney be present.

The mode in
which the pro-
ceedings are to
be in this court.

The plaintiff in this action, in the first place, is to find no pledges to prosecute in the suit.

First sum-
mons.

He, or his attorney, is first to take out a summons from the sheriff, returnable at the next county-court, which is directed to the sheriff's bailiff, who is to summon the defendant; and if he appears by attorney, the plaintiff

Plaintiff at next

(*f*) 2 Inst. 312.

(*i*) 3 Lev. 203.

(*g*) 2 Inst. 139.

(*k*) Lut. 1413.

(*h*) 4 Inst. 266.

must also enter his appearance by attorney, and enter or file his declaration, wherein he is to show his cause of action in the same form as in the other courts, but ingrossed on parchment, with the usual stamp.

court, to enter his appearance, and declare.

11 H. 7. c. 15.

The next court after filing the declaration the defendant may imparl, and at the next court after he is to put in his plea on parchment, with the usual stamp, and the plaintiff is to continue his suit from court to court.

Defendant may at next court imparl.

If issue be not joined at the next court following, plaintiff is to file his replication or demurrer.

To file replication, &c.

If the plaintiff reply, then the defendant is to rejoin at the next court, or he may be ruled for that purpose on peril of neglect.

But if freehold be pleaded, this court can proceed no farther, if the action be upon plaint; but if brought by writ of *justicies*, which gives a power to the sheriff to hold plea of 40s. or above, the plaintiff may reply, and show his title, and the court may proceed and determine the issue (*l*).

If freehold pleaded, no further proceeding unless by *justicies*.

Upon issue being joined, a jury is thereupon warned to appear, and try as in other cases.

Issue joined.

The proceedings are filed with the under-sheriff regularly from court to court, and imparlances are granted of course.

Proceedings are filed.

When the trial is over, the verdict being for the plaintiff, he may have a *fi. fa.*, but *cannot* have a *ca. sa.*, (though in *Wales*, the contrary is,) for this court being not of record, a *capias* does not lie, but an action may be brought upon this judgment in the *superior court*, though the verdict be under 40s. (*m*). A *lev. fa.* may be had of the goods and chattels, but not of the land and chattels (*n*).

Trial over and verdict for the plaintiff, execution may be had against the goods, &c. but not a *cap. ad satis*.

34 H. 8.

If the defendant should *not* appear at the next county-court after summoned, the bailiff having returned him *warned or summoned*, the sheriff then issues out a writ of *distringas*, to distrain his goods, or a writ of attachment; and if he appear not on the return of the goods being levied, he issues an *alias* and *pluries*, and so on *ad infinitum* until he does appear.

If the defendant does not appear, the next process is a *distringas*.

(*l*) Dalt. 507.

(*n*) Lutw. 1413.

(*m*) Cro. El. 96. Greenw. 22.

Goods dis-
trained to be
kept.

And the goods or chattels, whereby the defendant is so attached or distrained, the bailiff shall keep until the next county-court, except the defendant replevy the same by two pledges, who shall become sureties that the defendant do appear at the next county-court, to answer the plaintiff. But if he do not replevy the goods, and defendant makes default at the next court, (at the day given by the *distringas* or attachment,) the court shall award the goods so attached to be forfeited, and shall keep them, and he may distrain again to be at the next county-court.

Compelling to
declare.

The defendant may compel the plaintiff to declare, by giving a rule for fourteen days next after the usual time allowed.

If not, *non-pros.*
and Costs.

And if plaintiff doth not file his declaration *within the time*, then upon such default the plaintiff is nonsuited; and the defendant may have costs taxed by the county-clerk, who is to receive 2s. for entering the judgment, and 2s. for the execution.

23 H. S. c. 5.

And in every case where the plaintiff may have costs against the defendant, the defendant shall have his costs.

If there is a
delay of exe-
cution.

If the sheriff delays execution, a writ *de executione judicii* may be directed to him out of Chancery to do execution, and thereupon an *alias* and *pluries*, and attachment against the sheriff.

Custom in
Yorkshire to
sue out a
vend. expn.
after the third
attachment.

In *Yorkshire* the custom is, in actions of debt, to file a declaration, according to the cause of action, and to sue out a *vend. exp.* after the third attachment, to sell such goods as have been taken upon that and the two former ones, for this reason, that when the defendant absconds, or will not appear to the action, the plaintiff may receive the value of the goods distrained towards satisfaction of his debt and costs, else they would remain in the bailiff's hands, and the plaintiff be without remedy in this court (*o*).

Sci. fa. after
year and day.

And in this court, no execution can issue without a *sci. fa.*, if the judgment is *above a year old*. And where a *sci. fa.* is requisite in the superior courts, so it is here.

If no plea put
in, judgment
by default.

If the defendant puts in no plea in time, then judgment is signed, or passes against him by his default, and a writ of inquiry is awarded the same day.

The Manner of keeping this Court.

The sheriff, at the first court after his election and discharge of the old sheriff, must read his *patent and writ of assistance*, and nominate his under-sheriff and county-clerk, and appoint four deputies at the least, to make replevins for the ease of the county.

Method of holding the court.

“ ———, ss. The first county-court of *J. B. esq.* sheriff of the said county, held at, &c. in the aforesaid county, the day of in the year of the reign of, &c., before *A. B.* and *C. D.* suitors of the same court.”

Opening of the court.

Then command the bailiff to make three proclamations, *O yes*, &c. and say,

“ All manner of persons that have any thing to do at this county-court of *J. B. esq.* sheriff of the county of , holden here this day for this county of , come forth and give your attendance.”

Bailiff to open the court, thus.

Command the bailiff to make proclamation again, and say,

Second proclamation.

“ All manner of persons, keep silence and hear the king’s writ of exigent and proclamation read.”

A coroner is to be then present, to pronounce judgment of outlawry against those that do not appear upon the *exigent* and *proclamation*, at the *fifth* county-court.

Coroner to pronounce judgment of outlawry.

The manner of the coroner pronouncing it, is thus, *viz.* he takes the exigents in his hands, and says,

The manner of pronouncing the judgment.

“ Forasmuch as *A. B.*, *C. D.*, and the rest of the men, defendants, named in these writs of exigents, have been called five county-days, and have not rendered their bodies to the sheriff of this county of ; therefore, we pronounce them, and every of them, outlawed.”

The like for the women defendants, using the word *waved*, instead of *outlawed*.

Women.

Command the bailiff the third time to make proclamation, *O yes*, &c. and say,

Third proclamation.

“ If any will enter any plaint, let him come forth, and enter them with the county-clerk.”

Then enter the plaint in this manner :

“ ———, ss. *A. B.* complains of *C. D.* of a plea of debt of 39 s. 11 d. ; or *A. B.* complains of *C. D.* of a plea of trespass in the case to the damage of the said *A. B.* of 39 s. 11 d.”

The form of the plaint, to be entered in the book.

Proceedings
thereon.

Then call the plaintiff thus,

"*A. B.* appear, or thou lovest thy plaint,"
three times.

If he appear.

If he appear by his attorney, then enter the warrant of attorney, *viz.* the two first letters of his name, over the name of the plaintiff.

Then call the defendant :

Call defendant
thus.

"*C. D.* appear, and answer *A. B.* in an action of debt,
" [or as the case is,] or thou forfeitest thy goods distrained,
" and further process will be awarded against thee."

If he appear, then enter his appearance.

Plaintiff has
time to de-
clare until
next court.

The plaintiff hath time to declare until the next court after the defendant's appearance, and the defendant im-
pars until the next court-day after.

If he puts in
his answer,
plaintiff may
join issue.

When the defendant puts in his answer, if the plaintiff joins issue, they may proceed to trial the next court-day, if they proceed not further by replication, rejoinder, rebutter, &c.

If at issue
ven. fac. must
issue.

If they be at issue, sue out a *venire facias*, to summon the jury ; then enter on the head of the panel thus : The jury between *A. B.* plaintiff, and *C. D.* defendant, of a plea of debt. When they are brought to the bar, bid the bailiff make proclamation, and say,

Proclamation
for jurymen.

" You good men that be impanelled to try the issue
" between *A. B.* plaintiff, and *C. D.* defendant, answer to
" your names, every man upon the first call, upon pain and
" peril that shall fall thereon."

If twelve appear, swear them one by one, as follows :

Oath to jury.

" You shall well and truly try the issue joined between
" the parties, according to the evidence. So help you
" God."

Being all sworn, bid them stand together, to hear the evidence.

Then swear the witnesses :

Oath to
witnesses.

" The evidence that you are to give to this inquest,
" touching the matter in variance, shall be the truth, the
" whole truth, and nothing but the truth. So help you
" God."

Jury to give
the verdict.

The jury, of course, after the evidence is finished, are to give their verdict in the same manner as in the courts above.

The verdict being pronounced and recorded, then adjourn the court to another day to be kept, commanding the bailiff to make proclamation, *O yes, &c.* and say,

Proclamation after to adjourn.

“ All manner of persons that have any thing more to do
“ at this court, let them come forth and they shall be
“ heard, otherwise they and every one else may depart
“ hence for this time ; and keep their hour here on *Wed-*
“ *nesday* the day of next, at of the clock
“ in the forenoon.”

Adjournment of the court.

For proceedings in this court in *replevin*, vide tit. *Replevin* 188.

The 23 *Geo.* 2, enacts,

c. 33. s. 1.

That “ the suitors of the county-court of *Middlesex*,
“ with the county-clerk, upon any plaint to be entered in
“ the said county-court, in any suit, where the debt or
“ damages shall not amount to 40 s., may proceed in a sum-
“ mary way, &c.”

Proceedings in the county-court of *Middlesex*.

“ That the sheriff, by his county-clerk, hold his county-
“ court, for the proceeding, on *Thursday* in every week,
“ at some convenient place within the hundred of *Ossulston*,
“ and on the first *Tuesday* in every month at some conve-
“ nient place within the hundreds of *Isleworth*, or *Elthorne*,
“ and on the last *Tuesday* in every month at some con-
“ venient place within the hundred of *Edmonton* ; provided
“ always, that the monthly court of the sheriff shall be
“ held as has been accustomed.”

Times and places appointed for holding the county-court.

Monthly court to be kept as usual.
s. 2.

“ That no plaint to be entered in the said county court
“ as aforesaid, nor any order or orders, or other proceed-
“ ings had thereupon by virtue of this act, shall be removed
“ out of the said court by any writ of *recordare*, *recordare*
“ *facias loquelam*, *certiorari*, or false judgment, or otherwise
“ howsoever ; but such order to be made by the said suitors
“ and county-clerk shall be final to all parties ; provided,
“ that all plaints in *replevin* shall be proceeded in, and
“ removable in the same manner, as if this act had not
“ been made ; provided also, that no person shall be liable
“ to be summoned to the said county-court at the suit of
“ any plaintiff, other than such person or persons as was or
“ were liable to be summoned to the county-court of *Mid-*
“ *dlesex* before this act made ; and that this act shall not
“ extend to give the said county-court any jurisdiction to
“ hold plea of or to hear or determine any action, cause
“ or suit, other than such action, cause or suit as the
“ county-court of *Middlesex* might have held plea of by
“ plaint before the making of this act.”

No plaints or orders of the court may be removed.

Except in *replevin*.

Who may be summoned.

Jurisdiction of the county-court not extended.

s. 4.

Under-sheriff
to deliver,
every month,
three lists of
12 freeholders,
to attend.

“ That the under-sheriff of *Middlesex* for the time being
“ shall, six days before the end of every month, deliver to
“ the county-clerk three several lists, each containing the
“ names and places of abode of twelve persons, to be by
“ the said sheriff taken from the freeholders book of the
“ said county of *Middlesex*, as suitors to attend the said
“ county-court, for the succeeding month, for the several
“ divisions ; one list for the hundred of *Ossulston*, one for
“ the hundred of *Isleworth* and *Elthorne*, and one for the
“ hundred of *Edmonton* ; and the county clerk shall cause
“ the said persons in the said lists to be summoned to
“ attend the said court, for each of whom the county-clerk
“ shall pay the said under-sheriff four-pence, and no other
“ suitor (except the persons so summoned) shall have any
“ voice in the said county-court held under the authority
“ of this act ; and no person shall be liable to be put upon
“ such list, to attend the said court as a suitor thereof,
“ oftener than once in every year.”

None to attend
more than once
in a year.
s. 7.

PRECEPTS in the COUNTY-COURT.

The sheriff's
summons on
the plaint.

———, } *G. M.* esquire sheriff of the county aforesaid, to
to wit. } *John Doe* and *Richard Roe*, my bailiffs of the
hundred of *D.* : I command you, that you summon *Richard*
Fenn, so that he be and appear at my next county-court
to be holden at _____, in and for the said county, on
Wednesday, the _____ day of _____ next, to answer
John Denn in a plea of debt [or a plea of trespass on the
case] ; hereof fail not. Given under the seal of my office,
this _____ day of _____

Bailiff's sum-
mons thereon.

To *Richard Fenn*, _____, to wit. You are sum-
moned to appear in person, or by some attorney, at the
next county-court to be holden at _____, in and for the
said county, on *Wednesday*, the _____ day of _____
next, to answer to *John Denn* in a plea of trespass on the
case ; hereof fail not. Dated this _____ day of _____
John Doe, bailiff.

Distringas or
attachment.

———, ss. *G. M.* esq. sheriff of the county aforesaid,
to, &c. : I command you, that you distrain [or attach]
Richard Fenn, by his goods and chattels ; so that he be at
my next county-court to be holden at _____, in and
for the said county, on, &c. next, to answer *John Denn*
in a plea of debt, or trespass on the case ; hereof, &c.
Dated, &c. : as before.

By the same sheriff.

Duces tecum,
or 2d or 3d
attachment or
distringas.

———, ss. *G. M.* esq. sheriff of the county aforesaid,
to, &c. : I command you, that you bring to my next
county-court to be holden at _____, in and for the said

county, on the day of next, all the goods and chattels of *Richard Fenn*, which you have distrained by virtue of a former precept directed to you, at the suit of *John Denn*, in a plea of debt [or trespass on the case]; and that you further distrain [or attach] the said *Richard Fenn*, by his goods and chattels, so that he be at the next court to be holden at , on the day of next ensuing, to answer the said *John Denn* in the same plea; and have there this precept. Dated, &c.

———, } *G. M.* esq. sheriff of the said county, to *John Doe*, my bailiff of the hundred of ,
to wit. }
greeting: I command you, that you expose to sale a steer, appraised at twenty shillings, of the goods and chattels of *C. D.* for that the said steer was attached at the suit of *E. F.* in a plea of debt upon demand for thirty-nine shillings; and at the court holden on the day, &c. the said *C. D.* although according to the custom of this court, used from the time to the contrary whereof the memory of man is not, the said steer is forfeited, and that you have the money on the next court there to be holden on the day of, &c. next ensuing, to satisfy the said *E. F.* of the debt aforesaid, and in what manner, &c. Dated, &c.

A venditioni exponas.

———, ss. *G. M.* esq. sheriff of the county aforesaid, to *John Doe*, &c. , greeting: Whereas I lately commanded you to attach *C. D.* by all his goods and chattels, so that he should be at my court to be held on the day of to answer *E. F.* in a plea of debt; but because the said *C. D.* has appeared by *J. S.* his attorney, to answer the said *E. F.* in his plea aforesaid, therefore I command you entirely to cease from the execution of the said precept; and if you have taken or distrained any goods or chattels of the said *C. D.* by virtue of the said precept, that then, without delay, you deliver them to the said *C. D.* Dated, &c.

A supersedeas upon an attachment or distringas.

———, ss. *G. M.* esq. sheriff of the county aforesaid, to *George Smith*, *Thomas Hanks*, and *John Deane*,——— greeting: I command you and each of you, that laying all other matters aside, and notwithstanding any excuse, you and each of you be in your own proper persons at my next county-court to be holden on *Wednesday*, the day of next, to testify and speak the truth in a certain matter of controversy, depending in the same court, between *L. M.* plaintiff, and *N. O.* defendant, in a plea of trespass on the case; and herein fail not at your peril. Dated, &c.

A subpœna ad testificand.

A levari facias.

———, ss. *G. M.* esq. sheriff of the county aforesaid, to *John Doe* and *Richard Roe*, my bailiffs of the hundred of _____, greeting: Because *C. D.* has recovered against *E. F.* thirty shillings in a plea of debt, and one shilling for his costs and charges, whereof the said *E.* is convicted in my county-court, by the judgment of the same court; therefore levy according to custom the said thirty shillings adjudged in the said court, and the said one shilling for costs, and have you that money at the next court, to render to the said *C. D.* for his said debt and costs; and have there this precept. Dated, &c.

A fieri facias
in debt.

———, ss. *G. M.* esq. sheriff of the said county, to *John Doe* and *Richard Roe*, my bailiffs of the hundred of _____, greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made as well a certain debt of thirty shillings which *E. F.* has recovered in my county-court against him, as thirteen shillings and ten pence, which were adjudged to the said *E. F.* in the same court for his costs and charges by him about his suit in that behalf expended; and have you that money at my next county-court to be holden at _____, in the said county, on the _____ day of, &c. to render to the said *E. F.* for the debt and damages aforesaid, whereof the said *C. D.* is convicted; and this, &c. Dated, &c.

Fieri facias
upon verdict
for the
defendant.

———, ss. *G. M.* esq. sheriff of the said county, to, &c. _____, greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made thirty-two shillings and two-pence, which were adjudged in my court to *E. F.* for his costs and charges, according to the form of the statute, which he hath been put to, by occasion that the said *C. D.* unjustly prosecuted a plaint in a plea of trespass on the case against the said *E.* in my said county-court, as is lately found by a certain jury of the country; and have that money at my next county-court to be holden at _____, on the _____ day of, &c. to render to the said *E.* for his costs and charges aforesaid, whereof the said *C.* is convicted; and this, &c.

A fieri facias
upon a nonsuit.

———, ss. *G. M.* esq. sheriff of the county aforesaid, to *John Doe*, &c.: greeting: I command you, that of the goods and chattels of *C. D.* you cause to be made fourteen shillings and four-pence, which were adjudged to *E. F.* in the said court, before the suitors of the said court, according to the form of the statute in that case lately made and provided, for his damages, for that the said *C.* did not prosecute his plaint lately levied in the said court against the said *E.* in a plea of trespass on the case; and have that money at my next court, before the suitors of

the said court to be holden at _____, on the _____ day of, &c. to satisfy the said *E.* his costs and charges aforesaid, whereof the said *C.* is convicted; and this, &c.

_____, ss. *G. M.* esq. sheriff of the county aforesaid, to *John Doe*, &c. greeting; I command you, that of the goods and chattels of *C. D.* you cause to be made fourteen shillings and ten-pence, which in the said court, before the suitors of the same court, were adjudged to *E. F.* for his damages which he had sustained by occasion of a certain trespass done to the said *E.* by the said *C.* at, &c.; and have that money, &c. to satisfy the said *E.* for his damages, whereof, &c.

A fieri facias
in trespass.

_____, ss. *G. M.* esq. sheriff of the county aforesaid, to *John Doe*, &c. greeting, &c. were adjudged to the said *E. F.* for his damages which he had by occasion of a certain trespass on the case, done to the said defendant at, &c. and have that money, &c.

A fieri facias
in trespass on
the case.

Were adjudged for his damages which he had by occasion of certain promises and undertakings made to the said plaintiff by the said defendant, at, &c.; and have that money, &c.

On promises.

It appears to me clearly, that from these forms, the county-clerk may take his several precepts, in every case, from the forms of the court above, only varying the place of appearance and return in the county-court, instead of the returns in the courts above; and the sheriff's name is used instead of the king's, as in a *scire facias*, thus:

The above forms
may be used
in every case.

"_____, ss. *G. M.* esq. sheriff of the county aforesaid, greeting: *Whereas A. B.* lately in my county-court, holden before me at _____, before the suitors of the same court, recovered against *C. D.* &c. Dated under the seal of my office this _____ day of _____ and in the _____ year of the reign of, &c." (*p*).

Sci. fu. after a
year and day.

If there is a cause depending in a *wapentake*, or *hundred* court, or other inferior court-baron, holden by any lord of a manor, it may be from thence removed into this court by a *tolt*, which comes from the *Latin* word *tollo*, to take away, and is a precept that supersedes all proceedings in those courts depending between the parties therein named; and the steward and bailiff return the record and proceedings thereon to the sheriff, and give notice to the parties to be there on the next court-day.

Tolt to remove
from the hun-
dred-court into
the county-
court.

Pone to remove
the cause.

If there be a writ of *justicies* to the sheriff, they may issue a *pone* to remove the cause to one of the superior courts, which must be returned thus :

Return to a
writ of *pone* on
the back.

By virtue of this writ to me directed, I have before the justices of the lord the king of the Bench at *Westminster*, the plaint that is in my county court by virtue of the writ of our lord the king of *justicies* between *A. B.* and *C. D.* of a plea of debt as it is said, as appears in the schedule to this writ annexed. The answer of, &c. (*q*)

Schedule.

_____ } At my county-court held at the
to wit. } the day of in the
year of the reign of his present majesty, *A. B.* complains of *C. D.* of a plea of debt ; in testimony of which, *R. L.*, *S. R.*, *T. O.* and *S. D.*, four lawful men of the said county, who were present at the said record, have set their hands and seals, the day and year above written.

A. B. complains of *C. D.* of a plea of debt 20*l.*

Where a writ
of *false judgment* lies.

A writ of false judgment lies where an erroneous judgment is given in this court, [being no court of record] ; then the party grieved by the judgment may have this writ, and remove all process of the suit in the common bench, and there it shall be examined ; if it be found erroneous, the judgment shall be reversed, and the suitors of the court, who gave the judgment, amerced.

Where does
not lie.

But it does not lie but in a court where there are suitors ; for if there be suitors, there the record cannot be justified by them (*r*).

The return on
the writ.

By virtue of this writ to me directed, I have recorded the record of the plaint which was in my county-court, with the process and judgment between the parties within mentioned ; and I have prefixed the same day to the said parties that they be before the justices within written at the day and place within contained, as by this writ I am required ; which record and process, and judgment thereon, appear in the schedule to this writ annexed. The answer of, &c.

What is to be
set forth in the
schedule.

In the schedule set forth the style of the court, plaint, (writ of *justicies*,) declaration, &c. to final judgment ; then say, In witness whereof I have hereunto set my hand and seal, this day of

The warning of the parties is sufficient by reading openly in court the writ, without other notice (*s*).

(*q*) Dalt. 269.

(*r*) F. N. B. 43, H.

(*s*) Dalt. 201.

This writ issues out of the Chancery, directed to the sheriff, commanding him to go to such court of some lord, or franchise, or hundred, or court-baron, or the like [*being no court of record*] where a plaint is sued, or a false judgment is supposed to be given in some suit which hath been in the court; and by this the sheriff is to make record of the same suit, in the presence of the suitors of the same court, and four lawful men of the county; and of this he is to make his certificate into the court above, under the seal, and the seals of four of the suitors of the same court, at the day appointed by the writ (*t*). It is said, nothing but the plaint shall be removed (*u*), though they be at issue.

Accedas ad curiam.

If false judgment be given in any other court-baron than in the sheriff's court, then the writ of false judgment is called an *accedas ad curiam* (*x*).

A precept is to be made by the county-clerk to the steward and bailiff of the court where the plaint is, commanding them, that taking with them four discreet and lawful free tenants of the county, to have the record of the plaint between the parties in the writ mentioned, so that the sheriff may have such certificate of the record before the justices at *Westminster*, on the day in the writ mentioned, under his seal, and the seal of four lawful men of the same court, and that they prefix a day to the parties to be there ready to proceed therein; and have there the names of the said four lawful men, and that precept.

County-clerk to make a precept.

The steward and four suitors return the precept to the sheriff with the plaint, and all things required, under his seal and the seal of four suitors; the sheriff then returns the writ thus,

Steward to return.

By virtue of this writ to me directed, I have been to the court within written, and have in full court caused to be recorded the plea within mentioned, and the same record (as appears in the schedule to this writ annexed) I have before the justices of the lord the king within written, at the day and place within mentioned, under my seal, and the seal of *I. C.*, *C. D.*, *K. B.*, and *E. P.*, four lawful men of my county, of those who were present at that record. And to the parties within written, I have prefixed a day, in the writ specified, that they be then ready to proceed in the plea as shall be just, as within I am commanded. The answer of, &c.

Sheriff's return.

(*t*) F. N. B. 71. Plow. 74.
Finch, 444.

(*u*) Dalt. 200.
(*r*) Fitz. 18. d.

Annex a schedule to the writ; the style of the court and the plaint are entered in the same manner as in the return to the *pone*, p. 220.

By this writ the sheriff is to go in person.

By this writ the sheriff is commanded to go in person to the court in the writ mentioned; and that he shall take with him four knights of the same county, and there must require the sight of the plea, and in full court. The sheriff must make a record of the said plea or suit, in the presence of the said knights, and of the suitors of the same court, and he must annex the record so made, as a schedule, to the back of the writ; and then he must return and certify the same under his own seal, and the seals of four suitors of that court, at the day appointed in the writ, into the king's court (*y*). But it seems it may be either the sheriff or under-sheriff.

Or thus, if sheriff goes in person and is refused.

Or it may be thus:

By virtue of this writ to me directed, I have been in my proper person, taking with me *I. H., T. H., L. M., I. K., &c.*, four good and lawful men of my county, to the court-baron of *G. S., &c.*, held at *P.* for the honour of *P.*, and have caused the plea aforesaid to be recorded at the day and place within contained, as I am within commanded. Whereupon the suitors of the same court at *P.* aforesaid, in their full court aforesaid, did altogether refuse to let me execute the said writ, or in any manner to intermeddle in the plea aforesaid, whereby I am not able to make execution of this writ. The answer of, &c. (*z*).

What sheriff may further return.

To these writs the sheriff cannot return that no court was held, except he also return that he requested the lord to hold one (*a*), then the justices will award a distress, to distrain the lord to hold his court (*b*).

On false judgment, need not take knights.

Upon the writ of false judgment, which is an *accedas ad curiam*, the sheriff must take with him four men to the court-baron, or hundred, but they need not be knights (*c*).

Returned under seal.

It must be returned under the seal of the sheriff, and the seals of four of the suitors of the same court (*d*).

The sheriff returned that he had been at the court, and that the suitors would not record the plea (*e*).

Require sight of plea.

Upon this writ, although the plaint or suit be determined, yet the sheriff is to make execution of the writ;

(*y*) Term de Ley.

(*c*) Fitz. 18.

(*z*) Reg. Judici. 263.

(*d*) Ib.

(*a*) Dalt. 205.

(*e*) Dyer, 262.

(*b*) Fitz. Rat. 21.

he is to require the sight of the plea, and to record the same, and to return the same record with the writ (*f*).

The sheriff returned that he came to the court to record the plea, and that the suitors said that there was no such plea (*g*). Or that the suitors would not deliver him any record (*h*). Or that the suitors would not deliver him the record, nor suffer him to have it (*i*).

Suitors said
no such plea.

In this writ, if the sheriff returneth thai the writ came to him so late that execution of the same could not be made, this is a good return; and upon such return the party may have an *alias*, directed to the sheriff, and a *pluries* (*k*).

Tarde good.

If the plaint is in a hundred or court-baron, the sheriff returns thus:

By virtue of this writ, taking with me *B. C. &c.*, four lawful men of the said county, I have in my proper person gone to the court of *E.*, held before *N.*, the day of in the year within written, and in that full court have caused to be recorded the plea within written. And I have ready that record before the justices within written, at the day and place within contained, under my seal, and the seals of four lawful men of the same court, who were present at that record, which is to this writ annexed. And I have prefixed a day to the parties named in the said writ, that they be then there ready to proceed in that plea, as shall be just, as by this writ I am required. The answer of, &c.

Return by the
sheriff where
the writ of
false judgment
or *acced. ad
curiam* is di-
rected to record
the plaint
out of a hun-
dred-court or
court baron.

If the sheriff sends his mandate to the bailiff for execution of the writ, the return is thus:

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *P.*, *E.* of *A.* of his hundred of *L.*, in the county of *N.*, who hath full execution of all writs and precepts to be executed within that liberty, and also the return of the same, to whom the execution of this writ doth wholly "belong to be made; for that execution thereof "cannot otherwise be made thereof in my bailiwick, out of "the said liberty; which said bailiff hath answered me "thus:" That he, taking with him *J. D.*, *E. H.*, &c., four discreet and lawful men of the county aforesaid, hath in his proper person gone to the hundred within written; and in that full hundred hath caused the plea to be recorded, which is in the same hundred, without the writ of the lord the king, &c., "which said record he hath sent to me,

If there is a
bailiff of a
liberty, and
sheriff sends his
mandate, the
return is thus.

(*f*) Dyer, 268.

(*i*) Lib. Intr. 342, 343.

(*g*) Fitz. Judg. 13. Nat. Br. 16.

(*k*) Lib. Intr. 345. d.

(*h*) Fitz. Proc. 128.

“ and which I herewith certify to the justices of the lord
 “ the king within mentioned, at the day and place within
 “ contained, under my seal, and the seals of the aforesaid
 “ *J. D., E. H., &c.*, four lawful men of the same hundred,
 “ of those who were present at that record; And I have
 “ prefixed the same day to the parties, that they be then
 “ there to proceed in that plea as shall be just; and that
 “ the residue of this execution appears in a certain schedule
 “ to this writ annexed.”

D. E. Esq. Sheriff.

T. S. Gent. Bailiff.

Sheriff's Duty in the Election of Coroner.

Particular
 coroners for
 every county.

THERE are particular coroners for every county of
England; usually four, but sometimes six, and some-
 times fewer (*l*). This officer is of equal antiquity with
 the sheriff; and was ordered, together with him, to keep
 the peace when the earls gave up their wardship of the
 county.

Chosen by the
 freeholders.

Writ de coro-
natore eligendo.

He is chosen by all the freeholders in the county-court;
 and for this purpose there is a writ at common law, *de*
coronatore eligendo, directed to the sheriff, in which it is
 expressly commanded,

“ That in his full county he cause one other or more, as
 “ the case is, to be chosen in the place of the deceased
 “ coroner, who, having taken his oath in the usual manner,
 “ may do all things which belong to the office of a coroner,
 “ and cause such an one to be chosen as best knoweth and
 “ can attend that office; and conclude with commanding
 “ the sheriff to certify to the court the name of the person
 “ chosen.”

Who chosen
 formerly.
 3 Ed. 1. c. 10.

Who now may
 be chosen.

And in order to effect this the more surely, it was
 enacted that none but lawful and discreet knights should
 be chosen; and there was an instance in the 5 *Ed.* 3.
 of a man being moved from this office because he was
 only a merchant (*m*). But it seems it is now sufficient
 if a man hath lands enough to be made a knight, whether
 he be really knighted or not; for the coroner ought to
 have estate sufficient to maintain the dignity of his office,
 and answer any fines that may be set upon him for his
 misbehaviour (*n*). And if he hath not enough to an-
 swer, his fine shall be levied on the county, as a punish-
 ment for electing an insufficient officer (*o*).

(*l*) F. N. B. 163.

(*m*) 2 Inst. 32.

(*n*) F. N. B. 163.

(*o*) Mirr. c. 1, s. 3 2 Inst. 175.

The names of such freeholders as are at the election of coroners ought to be set down in the county-court book, for to certify such their election.

Names of freeholders to be set down.

The coroner is chosen by a writ *de coronatore eligendo*, directed to the sheriff by the freeholders or suitors in open and full court, and is published there; so deriving his authority under the freeholders, and not under the crown. By the king's demise, he is not out of office as sheriffs are. The sheriff is to return and certify into the Chancery the election of every such coroner, and his name; likewise the county-clerk in court must administer to the coroner his oath for the due execution of his office (*p*).

Chosen by writ in open court.

King's demise.
Return.

The election of coroner is now regulated by 58 *Geo* 3, c. 93. by which it is enacted,

That the sheriff shall hold his county-court for such election at the most usual place of election of coroners within the said county, and shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ *de coronatore eligendo*, or upon the same day, and then shall adjourn the same court to some convenient day not exceeding fourteen days, giving ten days notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be demanded for determination thereof, then the said sheriff, or in his absence the under-sheriff, with such others as shall be deputed by him, shall forthwith then proceed to take the said poll, in some public place by the same sheriff, &c.; and every such poll shall commence on the day upon which the same shall be demanded, and be regularly proceeded in from day to day (*Sunday* excepted) until the same be finished, but so as that no poll shall continue more than ten days at most (*Sunday* excepted), and the said poll shall be kept open seven hours at least each day, between the hours of nine in the morning and five at night; and the said sheriff, &c. shall appoint such number of poll-clerks as to him shall seem meet for the taking thereof, which said poll-clerks shall all take the said poll in the presence of the said sheriff or his under-sheriff, or such as he shall depute; every such clerk to be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and place of his abode and freehold, and name of the occupier thereof, and for whom he shall poll, and to poll no freeholder who is not sworn, if required to be sworn by either of the cau-

didates, which oath of the said clerks the said sheriff, &c. are empowered to administer ; and the said sheriff, &c. shall appoint for each candidate such one person as shall be nominated by each candidate, to be inspector of every clerk who shall be appointed for taking the poll, and every freeholder before he polls to be sworn, if required, and which oath the said sheriff, &c. is empowered to administer ; *videlicet*,

Oath of qualification.

You swear (*or*, being one of the people called Quakers, you solemnly affirm,) that you are a freeholder of the county of _____ and have a freehold estate consisting of _____ lying at _____ within the said county ; and that such freehold estate has not been granted to you fraudulently, on purpose to qualify you to give your vote at this election, and that the place of your abode is at _____ (*and if it be a place consisting of more streets or places than one, specifying what street or place,*) that you are twenty-one years of age as you believe, and that you have not been before polled at this election.

5 El. c. 9. &
2 Geo. 2. c. 25.

And in case any freeholder be convicted of perjury on taking such oath, or of corrupt subornation of any other person to take the said oath, for every such oath they shall incur the pains and penalties of 5 *El. c. 9*, and 2 *Geo. 2. c. 25*, and by any other law now in force for the punishment of perjury or subornation of perjury.

s. 2.

That no person shall be allowed to have any vote for or by reason of any trust estate or mortgage, unless in the actual possession or receipt of the rents and profits, but that the mortgagor or *cestui que* trust may vote for the same estate, notwithstanding such mortgage, or trust : and all conveyances of any messuages, &c. in order to multiply voices, or to split the interest therein, to enable them to vote, are declared void.

s. 3.

That all the reasonable costs and expenses of poll-books, booths and clerks, (such clerks to be paid not exceeding one pound one shilling each *per diem*,) for the purpose of taking such poll, shall be borne and paid by the several individuals in equal proportions.

Upon this statute it has been held, that being made solely to regulate the time and mode of electing coroners, where the receipt of the writ was more than six days from the holding of the next county-court, and at which no step was taken, a subsequent election was void (*q*).

Notice of Election.

“ The sheriff of _____ will proceed to the election of a coroner for the said county, in the room of _____

“ *T. A.* Esq. deceased, at the county court to be held at
 “ by adjournment, on the day
 “ of next, at ten o'clock in the forenoon of the same
 “ day; at which time and place the freeholders of the
 “ same county are desired to attend.

——— Esq Sheriff.”

When the election begins, proclamation is to be made in this manner :

“ All manner of persons who have any thing to do in Proclamation.
 “ this election of coroner for the county of in the
 “ room of , Esq. deceased, let them draw near
 “ and give their attendance.”

After they have done giving their votes, then proclaim,

“ If any one can gainsay why should not be Proclaim.
 “ appointed one of the coroners for this county, let him
 “ come forth, and he shall be heard, otherwise the sheriff
 “ of will declare the said duly
 “ elected.”

Then administer the oath thus :

“ You shall swear that you will well and truly serve our Coroner's oath.
 “ sovereign lord the king's majesty, and his liege people,
 “ in the office of a coroner, and as one of his majesty's
 “ coroners of this county of and therein you shall
 “ diligently and truly do and accomplish all and every
 “ thing and things appertaining to your office, after the
 “ best of your cunning, wit and power, both for the king's
 “ profit, and for the good of the inhabitants within the said
 “ county, taking such fees as you ought to take by the
 “ laws and statutes of this realm, and not otherwise.
 “ So help you God.”

The oaths of allegiance, supremacy and abjuration Oath of alle-
 are to be taken, and then the oaths of office and decla-
 ration required by 9 *Geo.* 4. When the coroner is elected,
 and sworn into his office, he is to remember the qualifi-
 cation-acts, and in due time to take the sacrament.

“ By virtue of this writ to me directed, in my full Return to
 “ county-court, held [by adjournment] at in the
 “ county of on the day of
 “ in the year within written; by the assent of the same
 “ county, I have caused *E. H.* Esq. to be chosen coroner
 “ in the place of the within-named *C.* deceased, which said
 “ *E. H.* as the manner is, hath taken corporal oath to do
 “ and keep those things which to the office of coroner in
 “ the said county doth belong, as I am within commanded.
 “ The answer of,” &c.

In case of scrutiny sheriff ought to grant a poll, and why.

The election being one at common law, a scrutiny is as incident to inquire into the polls as numbering of the polls is incident to the holding up of hands; nor can the just majority be otherwise duly discovered or declared (*r*).

Of Election of Members to serve in Parliament.

THE method of proceeding to election of a member is regulated by the law of parliament, and by several statutes made for that purpose.

As soon as parliament is summoned, Chancellor sends his warrant to the clerk, &c. who issues out writs, &c.

As soon as the parliament is summoned, the Lord Chancellor [or, if a vacancy happens during the sitting of parliament, the Speaker, by order of the House, and without such order if a vacancy happens by death, or the member's becoming a peer in the time of a recess for upwards of *twenty days*] sends his warrant to the clerk of the Crown in Chancery, who thereupon issues out writs to the sheriff of every county for the election of all members to serve for that county, and every city and borough therein.

c. 84. s. 4.

Within two days after receipt of the writ, proclamation to be made of the election, which must begin not later than the 16th day, nor sooner than the 10th.

The 25 Geo. 3. enacts,

“ That in every *county*, the sheriff, having indorsed on the back of the writ *the day on which he receives it*, shall, *within two days after* the receipt thereof, cause proclamation to be made at the place where the ensuing election ought by law to be held, of a special county-court, to be there held, for the purpose of such election only, on any day (*Sunday* excepted) not later from the day of making such proclamation than the 16th day, nor sooner than the 10th: and that he shall proceed in such election, at such special county-court, in the same manner as if the said election had been held at a county-court, or at an adjourned county-court, according to the former laws.”

How proceedings were before
25 Geo. 3.

Before this statute, the sheriff was to proceed at the next county-court that should happen after the delivery of the writ, and if the county-court fell upon the day of delivery, or *within six days after*, he might adjourn to some other convenient time, not longer than *sixteen days*, nor shorter than *ten*, but not to alter the place without consent of all the candidates; and in all such cases *ten days public notice* must have been given of the *time and place of the election*.

7 & 8 W. 3.
c. 23. s. 3.

In the borough *New Shoreham* in *Sussex*, where certain freeholders of the county are entitled to vote, the election must be within *twelve days*, with *eight days notice*. Shoreham.
11 Geo. 3. c. 55.

For the *election of citizens and burgesses*, the sheriff sends his precept under his hand and seal to the returning officer within the city and borough, directing him to comply with the substance of the writ, and he is to issue such precept within three days after the receipt of the writ, and deliver the same to the proper returning officer, and no other; who is to indorse the date of the receipt thereof in the presence of the person delivering it, and proceed to the election within eight days from the *receipt* of the procept, giving *four days notice* thereof. Citizens and
burgesses.

7 & 8 W. 3.
c. 25. s. 1.

The notice should express the purpose of the meeting, as well as the time and place, and must not be for a meeting *generally* (s). What notice
ought to
express.

If the returning officer die during the poll, his successor may execute and finish (t). If sheriff die.

Undue influence being guarded against by the several statutes to prevent bribery, the election is to be proceeded to on the appointed day; the sheriff, or other returning officer, first taking an *oath against bribery*, and for the *due execution of his office*: the candidates likewise, if required, must swear to their qualifications; and the electors in counties to theirs; and the electors both in *counties* and *boroughs* are also compellable to take the oath of abjuration, and that against bribery: and before they vote, to take the oath of allegiance and supremacy. And all electors for *cities* and *boroughs* shall swear to their names, additions, &c., and that they are of the age of twenty-one, and have not polled before. The election being closed, the returning officer in *boroughs* returns his precept to the sheriff, with the persons elected by the majority; and the sheriff returns the whole, together with the writ for the county, and the knights elected thereupon, to the clerk of the Crown in Chancery, before the day of meeting, *if it be a new parliament*, or within fourteen days after, if it be an *occasional vacancy*, and this under the penalty of 500*l.* If he does not return such knights only as are duly elected, he forfeits by the old statute of *H. 6*, 100*l.*, and the returning officer in *boroughs*, for a false return, 40*l.*, and liable to an action How sheriff is
to proceed on
the day.

2 Geo. 2.
c. 24. s. 3.
9 Ann. c. 5.

7 & 8 W. 3. c. 17.

25 Geo. 3. c. 8.

(s) Simeon on Elect. 153. (t) 4 Com. Dig. 29. 1 Doug. 113, 138.

for double damages. But the members returned by him are the sitting members until the House of Commons, upon petition, shall adjudge the return to be false and illegal.

To disturb the proceedings in a county-court for the election of a knight is so serious an offence against public order, that the sheriff may order a person so offending to be taken into custody, and carried before a justice, to give security for good behaviour, or he may be punished by indictment (*u*).

The returning officer has a discretion in admitting or rejecting votes, and no action can be maintained against him for refusing a vote, unless it be shown to result from a malicious and improper motive, which is altogether a question for a jury (*x*).

The several Acts.

I shall next state the acts of parliament relative to elections for members, from 7 *H.* 4. to the present period, respecting the duty of the sheriff and returning officer, and afterwards the return of the writ, and indentures taken thereon.

By 7 *H.* 4, the election of *knights of the shire* is to be made in the following manner :

“ At the next county-court after the delivery of the writ, proclamation is to be made by the sheriff of the county “ of the day and place the parliament is to assemble, and that “ all as are there present shall attend at the election of “ knights of the shire ; and then, in full county, a free and “ indifferent election shall be made ; ” “ and after they “ be chosen, the names of the persons shall be written in “ an indenture, under the seals of them that did choose them, “ and tacked to the writ, which indenture, so sealed and “ tacked, shall be the return.” And in the writs of parliament this clause shall be put : “ and your election in your “ full county made, you shall without delay distinctly and “ openly certify under your seal, and the seals of them who “ were concerned in that election, to us in our Chancery, at “ the day and place in the writ retained.”

By 11 *H.* 4, the justices of assize shall have power to inquire of returns made by sheriffs, and if found by inquest that he hath made return contrary to stat. of 7 *H.* 4, he shall incur the penalty of 100 *l.* to the king, and the knights unduly returned shall lose their wages.

(*u*) *Spilsbury v. Micklethwaite*, 1 Taunt. 146.

(*x*) *Cullen v. Morris*, 2 Stark. 577.

c. 15.
How election
of knights
ought to be.

c. 1.

The 1 *H. 5, c. 1*, is repealed by 14 *Geo. 3, c. 58*, and 8 *H. 6, c. 7*, and the 8, 10 and 23 *H. 6*, so far as relates to the residence of persons to be elected, or of the persons by whom they are to be chosen.

By the 25 *H. 6*,

“ Every sheriff, after the delivery of any writ to him, shall make and deliver, without fraud, a sufficient precept under his seal, to *every mayor and bailiff*, or to *bailiffs* or *bailiff*, where no *mayor* is, of the cities and boroughs within his county, *reciting the said writ*, commanding them, if it be a city, to choose by citizens of the of the same city citizens, and in the same manner and form, if it be a borough, by the burgesses of the same, to come to the parliament. And that the same *mayor, &c.* shall return lawfully the precept to the same sheriff, by indentures betwixt the same sheriff and them to be made, of the said elections, and of the names of the said citizens and burgesses by them so chosen, and thereupon every sheriff shall make a good and rightful return of every such writ, and of every return by the mayor and bailiffs, or bailiffs or bailiff, where no mayor is, to him made, in default forfeits 100*l.* with costs: and any mayor, &c. who shall return other than those which be chosen by the citizens and burgesses, forfeits to the king 40*l.*, and 40*l.* to the person chosen.”

c. 14.

Every sheriff shall, within eight days, make a precept to every mayor, &c.

Rightful return.

s. 1.

Sheriff not making due election, &c.

Every sheriff that maketh no due election of knights in *convenient time, viz.* every sheriff in his full county, between the hours of *eight and eleven* before noon, and maketh not true return of such elections, forfeits 100*l.* to the king, and 100*l.* to him that will sue, with costs; to be sued for by such knights within three months after the parliament begun; if not, to him that will sue.

By the 7 & 8 *W. 3*,

“ That as well upon the calling or summoning any new parliament, as also in case of any vacancy, the several writs shall be delivered to the proper officer to whom the execution thereof doth belong, and to no other person; and that every such officer, on the receipt of the same writ, shall on the back thereof indorse the day he received the same, and shall forthwith, upon receipt of the writ, make out the precept or precepts to each borough, town-corporate, port, or place within his jurisdiction, where any member or members are to be elected to serve, or to supply any vacancy, and within *three* days after the receipt of the writ (*y*), shall, by himself or agent, deliver

c. 25. s. 1.

Writs to be delivered to the proper officer, who is to indorse them and make out the precept.

Precept to be delivered in 3 days after receipt of writ.

(y) Now two days, by 25 *Geo. 3, c. 84*.

“such precept to the proper officer of every such borough,
 “&c. to whom the execution doth belong; and every such
 “officer on the back of the same shall indorse the day of
 “his receipt, in the presence of the party, and shall forth-
 “with cause public notice to be given of the time and place
 “of election, and shall proceed to election thereupon, within
 “*eight* days next after, and give four days notice at least
 “of the day appointed for the election.”

Officer to in-
 dorse the day
 of receipt, and
 give notice of
 time of election
 in 8 days.

To take no fee
 for return.

s. 2.

County-court
 to be held, and
 proceed to elec-
 tion, unless it
 fall out in six
 days after
 receipt of writ.
 See 25 G. 3.

c. 84.
 Sheriff to take
 the poll, if re-
 quired, and to
 appoint clerks.

Names of free-
 holders to be
 set down, and
 for whom they
 poll.

Freeholders to
 be sworn.
 s. 3.

Oath.

Sheriff not to
 adjourn the
 court unless
 the candidates
 consent.
 s. 5.

Neither the sheriff nor under-sheriff, nor the mayor or
 other officer of any borough, &c. shall pay or take any
 fee for the making out the receipt, delivery, return, or exe-
 cution of the precept.

“That upon every election, the sheriff of the county shall
 “hold his county-court at the most public and usual place
 “of election, where the same has most usually been for
 “forty years last past; and in case the said election be not
 “determined on the view, with the consent of the free-
 “holders, but a poll be required, then the said sheriff or
 “under-sheriff, &c. shall proceed to take the said poll, in
 “some open place, by the same sheriff, &c. appointed; and
 “for the proceeding in the said poll the said sheriff or
 “his under-sheriff, &c. shall appoint clerks for taking
 “thereof, which clerks shall all take the said poll in the
 “presence of the said sheriff, &c.; and before they begin,
 “every clerk shall, by the said sheriff, &c. be sworn truly
 “and indifferently to take the same poll, and to set down
 “the name of each freeholder, and the place of his free-
 “hold, and for whom he shall poll, and to poll no freeholder
 “who is not sworn, if so required by the candidates (which
 “oath the said sheriff, &c. is to administer); and the
 “sheriff, &c. shall appoint for each candidate such one
 “person as shall be nominated to him by each candidate,
 “to be inspectors of every clerk who shall be appointed
 “for taking the poll; and every freeholder, before he is
 “admitted to poll, shall, if required, take the oath after
 “mentioned (which the sheriff, &c. are hereby authorized
 “to administer).” viz.

You shall swear that you are a freeholder for the
 county of _____ and have freehold lands or here-
 ditaments of the yearly value of 40 s. lying at
 within the said county of _____ and that you have
 not been before polled at this election.

The sheriff, &c. shall proceed to the polling all the free-
 holders then present, and not adjourn the county-court to
 any other town or place without the consent of the candi-
 dates, nor shall delay the election, but proceed in taking
 of the poll, from day to day, without further adjournment,

without the consent of the candidates, until all the freeholders present shall be polled.

Every sheriff, &c. shall forthwith deliver to such person as shall desire the same, a copy of the poll taken, paying a reasonable charge for writing the same; and every sheriff, &c. for every wilful offence, shall forfeit to every party aggrieved 500*l.*, to be recovered, with full costs of suit, by action of debt, &c.

Copy of poll delivered, if desired.
Penalty, &c.
s. 6.

That the sheriff of *Southampton*, or his deputy, at the request of one or more of the candidates, shall adjourn the poll from *Winchester*, after every freeholder present is polled, to *Newport*, in the *Isle of Wight*, for the ease of the inhabitants of the said island.

Poll adjourned from *Winchester* to *Newport*, *Isle of Wight*.
s. 10.

By 10 & 11 W. 3.

That the *sheriff*, or other officer, shall, on or before the day that any future parliament shall be called to meet, not exceeding *fourteen days* after any election made, either in person, or by his deputy, make return of the same to the clerk of the Crown in the high court of *Chancery*, to be filed; and pay 4*s.* for every knight of a shire, and 2*s.* for every citizen, burgess or baron of the cinque ports, returned; and the sheriff shall charge the same to His Majesty, and have allowance in his account.

c. 7. s. 1.

Writs to be returned 14 days after election.

Sheriff on return of writ to pay the ancient fees, &c.

That the proper officer of the cinque ports shall be allowed six days from the receipt of such writ for the delivery of the precept.

In the cinque ports 6 days allowed.
s. 2.

Every sheriff, &c. who shall not make the returns shall forfeit 500*l.*, one moiety to His Majesty, and the other to him that shall sue, to be recovered by action of debt, &c.

Penalty for not making return.
s. 3.

By 9 Ann.

Every person (qualified by this act) who shall appear as a candidate, or be proposed to be elected to serve as member for any county, city, borough, or cinque port in *England*, &c. shall, on request by any other person who shall stand candidate at such election, or by any two or more persons having right to vote at such election, take the oath following:

c. 5. s. 5.

Every candidate at the request of another, shall take the following oath.

“ I, *A. B.* do swear, that I truly and *bonâ fide* have such
“ an estate, in law and equity, to and for my own use and
“ benefit, of or in lands, [tenements or hereditaments,]
“ over and above what will satisfy and clear all incum-
“ brances that may effect the same, of the annual value of
“ 600*l.* above reprises, as doth qualify me to be elected
“ and returned to serve as a member for the county of
“ according to the tenor and true meaning of
“ the act of parliament in that behalf; and that my said

“ lands, [tenements or hereditaments] are lying or being
 “ within the parish, [township or precinct] of [or,
 “ in the several parishes, townships, or precincts of
 “ in the county of or, in the several counties of
 “ as the case may be].”

If candidate be
 for a city, &c.
 s. 6.

And in case such candidate is to serve for any city, &c.
 the oath shall relate only to the value of 300*l. per annum*,
 and be taken, the same effect (*mutatis mutandis*).

The oath admin-
 istered by the
 sheriff, who
 shall certify the
 same into the
 K. B. or Chan-
 cery, or forfeit
 100*l.*
 s. 7.

That the oaths shall be administered by the *sheriff* or
under-sheriff for any such county, or by the *mayor*, &c.
 to whom it shall appertain to take the poll, or make the
 return at such election for the same county, &c. or by any
 two justices of the peace within *England*, *Wales*, and
Berwick-upon-Tweed. And the said *sheriff*, &c. and *justices*
of the peace, are required to certify the taking thereof
 into Chancery, or the Queen's Bench, within *three* months
 after the taking the same, under the penalty of 100*l.*, one
 moiety to the queen, and the other to such persons as will
 sue; to be recovered, with full costs of suit, by action of
 debt, &c.; and if any of the said candidates proposed to
 be elected shall wilfully refuse, on reasonable request, or
 at any time before the day upon which such parliament by
 the writ of summons is to meet, to take the oath, then the
 election and return of such candidate shall be void. No
 fee for administering the oath or filing the certificate,
 except 1*s.* for administering the oath, 2*s.* for making the
 certificate, and 2*s.* for filing, under the penalty of 20*s.*

Candidate re-
 fusing to take
 the oath, the
 election to be
 void.

s. 2.

c. 24. s. 1.

By 2 *Geo.* 2.

Electors to take
 the following
 oath, if
 demanded.

Upon every election of any member, every freeholder,
 citizen, &c. shall, before he is admitted to poll, take the
 following oath, or, being one of the people called *Quakers*,
 make affirmation, in case the same be demanded by either
 of the candidates, or two of the electors :

Elector's oath.

“ I, *A. B.* do swear, [or, being one of the people called
 “ *Quakers*, I, *A. B.* do solemnly affirm,] I have not received
 “ or had, by myself or any person whatsoever in trust for
 “ me, or for my use and benefit, directly or indirectly, any
 “ sum or sums of money, office, place or employment,
 “ gift or reward, or any promise or security for any money,
 “ office, employment or gift, in order to give my vote at
 “ this election, and that I have not before been polled at
 “ this election.”

Presiding
 officer to
 administer it,
 on forfeiture
 of 50*l.*

Which the officer presiding, or taking the poll, is empowered
 to administer, *gratis*, if demanded, on pain to forfeit 50*l.*
 to any person, to be recovered, with full costs of suit, by
 action of debt, &c. And if the offence shall be committed
 in *Scotland*, to be recovered, with full costs, by summary

action or complaint before the Court of Session, or by prosecution before the Court of Justiciary there; and no person shall be admitted to poll till he has taken the said oath, in case the same shall be demanded.

If any *sheriff*, &c. shall admit any person to be polled without taking such oath or affirmation, if demanded, such *returning officer* shall forfeit 100*l.*, to be recovered, with full costs of suit; and that if any person shall vote or poll at such election without having first taken the oath, or, if a *Quaker*, having made affirmation, if demanded, such person shall incur the same penalty.

Every *sheriff*, &c. being the *returning officer*, shall, immediately after reading the writ or precept for the election, take and subscribe the following oath; *viz.*

“ I, *A. B.* do solemnly swear, that I have not, directly or indirectly, received any sum or sums of money, office, place or employment, gratuity or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use or benefit or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes (z).

Which oath, any justice of the peace of the said county, &c., where such election shall be made, or, in his absence, any three of the electors, are required to administer; and such oath shall be entered among the records of the sessions of such county, &c.

If any returning officer, elector, or person taking the oath or affirmation, shall be guilty of wilful perjury, or of false affirming, and be convicted, shall incur and suffer the pains and penalties inflicted in cases of wilful and corrupt perjury.

No person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in future.

All *sheriffs*, &c. shall, immediately after reading such writ or precept, read or cause to be read openly, before the electors, this act.

Every *sheriff*, &c. for every wilful offence shall forfeit 50*l.*, to be recovered, together with full costs of suit.

By 18 Geo. 2.

Upon every election to be made of any knight, every freeholder, instead of the oath or affirmation prescribed to

(z) Repealed, as to Scotland, by 16 Geo. 2. c. 11. s. 18.

Sheriff, &c. admitting any to be polled, before sworn, to forfeit 100*l.*

Voters to incur the penalty. s. 2.

Returning officer to take the following oath. s. 3.

The oath.

Justice of peace may administer the oath.

Penalty of wilful perjury. s. 5.

Persons convicted not to vote. s. 6.

Act to be read by the sheriff, &c. s. 9.

For wilful offences to forfeit 50*l.* s. 10.

c. 18. s. 1.

Oath instead of 10 Ann. c. 23.

be taken by the 10th of *Ann.* intituled, “ An act for the more effectual preventing fraudulent conveyances, in order to multiply votes for electing knights of shires to serve in parliament,” before he is admitted to poll at the said election, shall (if required) first take the oath or affirmation following :

The oath.

“ You shall swear, [or, being one of the people called Quakers, you shall solemnly affirm] that you are a freeholder in the county of _____ and have a freehold estate, consisting of _____ [specifying the nature of such freehold estate, whether messuage, land, rent, tithe, or what else, and if such freehold estate consists in messuages, lands, or tithes, then specifying in whose occupation the same are ; and if in rent, then specifying the names of the owners or possessors of the lands or tenements out of which such rent is issuing, or of some or one of them,] lying or being at _____ in the county of _____ of the clear yearly value of 40*s.* over and above all rents and charges payable out of or in respect of the same ; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve calendar months, [or that the of same came to you, within the time aforesaid, by descent, marriage, marriage-settlement, devise, or promotion to to a benefice in a church, or by promotion to an office] ; and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote ; and that your place of abode is at _____ in _____ and that you are twenty-one years of age, as you believe ; and that you have not been polled before at this election.”

Which oath
sheriff, &c. to
administer.

Which the *sheriff*, &c. is to administer. And in case any freeholder shall commit wilful perjury, and be convicted ; and if any person do unlawfully and corruptly procure or suborn any freeholder, or other person, to take the said oath, &c. in order to be polled, whereby he shall commit such lawful perjury, and shall be convicted, he shall incur such penalties as are inflicted by 5 *El. c. 9.* and 2 *Geo. 2.*

Booths to be
erected at the
expense of the
candidates, for
taking polls.
s. 7.

That at every election, the *sheriff* shall make, or erect, at the expense of the candidates, convenient booths or places for taking the poll, as the candidates, or any of them, shall, *three days* at least before the commencement of the poll, desire, so as the same do not exceed the number or rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding *fifteen* ; and shall affix, on the most public part of the said booths, the names of

the rape, wapentake, lathe, ward, or hundred, or rapes, &c. for which such booth or polling-place is allotted or designed; and the said *sheriff* shall appoint proper clerks, at each of the said booths, to take the poll (which said clerks shall be at the expense of the candidates, and be paid not exceeding one guinea *per day* each clerk); and the said *sheriff* shall make out a list for each of the said booths, of all the several towns, villages, parishes and hamlets, lying or being wholly or in part in the rape, &c. for which such booth is allotted, and shall, on request, deliver a true copy to any of the candidates, or their agents, who shall desire the same, taking for each copy 2s.

Sheriff to appoint clerks for polling at the candidates expense.

List of towns, &c. for each booth.

In an action brought by the high bailiff of *Westminster* to recover the defendant's share of the expenses, the court held that it was not necessary to prove that the sheriff, previous to taking the poll, had complied with the 2 *Geo. 2*, the *onus* lying on the defendant, as the law would presume, *omnia rite acta*; that it was not necessary to produce the writ to the sheriff, but the precept to the bailiff was sufficient proof that the election had been duly held; that the poll-books need not be produced to prove that the defendant was a candidate, his having used the hustings, &c. was sufficient, at least he could not take the objection after verdict; the court disallowed the charge for constables, it being the bailiff's duty to employ them to keep the peace; but charges for watching at night, beer to the workmen employed, pavours and surveyors bills, were admitted as part of the expenses of the hustings, &c. (*a*).

c. 24.

That no sheriff, &c. shall admit any person to vote for any lands, &c. sworn by the said oath to be lying at some parish, town or place, or parishes, towns or places, which parish, &c., is not mentioned in the said list so made out for such booth, &c., unless such lands, &c., lie in some town or place not mentioned in any of the lists so made out.

Voting to be regulated by the list.
s. 8.

That the *sheriff*, &c. shall allow a cheque-book, for every poll-book, for each candidate, to be kept by their respective inspectors, at every place where the poll or such election shall be taken or carried on.

A cheque book for every poll-book allowed.
s. 9.

That no sheriff shall take upon himself to adjourn the the court for longer than *sixteen days*.

Adjournment.
s. 10.

That in case any such *sheriff*, &c. shall wilfully offend against this act, he shall be prosecuted by information, &c.

6 *Geo. 2*. c. 23.
s. 1, repealed.
s. 12.

(*a*) *Morris v. Hunt*, 1 Ch. 453. *Morris v. Burdett*, 2 M. & S. 212.

c. 28. s. 1.

By 19 *Geo. 2*,

Persons demanding to vote, if required, to take the oath following, &c.

The oath.

That every person demanding to vote for such city or town, being a county of itself, in that part of *Great Britain* called *England*, in respect of any freehold estate, shall, before he is admitted to poll at the said election, (if required,) first take the oath following; *viz.*

“ You shall swear, [or, being a Quaker, you shall solemnly affirm,] that you have a freehold estate, consisting of [specifying the nature of such freehold estate, whether messuage, land, rent, tithe, or what else; and if such freehold estate consists in messuages, lands, or tithes, then specifying in whose occupation the same are; and if rent, then specifying the names of the owners or possessors of the lands or tenements out of which such rent is issuing, or of some or one of them], lying or being in the city and county [or town and county, as the case may be] of _____ of the clear yearly value of 40s. over and above all rents and charges payable out of or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve calendar months; [or, that the same came to you, within the time aforesaid, by descent, marriage, marriage-settlement, devise, or promotion to a benefice in a church, or by promotion to an office;] and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at _____ in _____; and that you are twenty-one years of age, as you believe; and that you have not been polled before at this election.”

The oath, &c. by whom administered.

Wilful perjury and subornation.

Which the sheriff, &c. is required to administer: and in case any freeholder or other person taking the same shall commit wilful perjury, and be convicted; and if any person do corruptly procure or suborn a freeholder to take the said oath or affirmation, whereby he shall commit such wilful perjury, and be convicted, he shall incur such pains and penalties as are mentioned in 5 *Eliz. c. 9*, and 2 *Geo. 2*.

Sheriffs to allow a cheque-book.

s. 6.

That the sheriff of any city or town, &c. shall, at every election, allow a cheque-book for every poll-book, for each candidate, to be kept by their respective inspectors, at the place where the pole for such election shall be taken.

Sheriffs to give public notice, &c.

That the sheriff shall forthwith, upon the receipt of the writ, cause public notice to be given of the time and place of election, and proceed to election within eight days next

after receipt of the writ, and give three days notice at least, exclusive of the day of the receipt of the writ, and of the day of election.

That in case any sheriff, &c. shall wilfully offend, he shall be liable to be prosecuted by information or indictment.

That every action, &c. shall be commenced within *nine calendar months* after the fact committed.

That all the statutes of jeofails shall extend to all proceedings in any action, &c. allowed by this act.

That in case the plaintiff or informer in any action, &c. shall discontinue, or be nonsuited, or judgment be given against him, then the defendant shall recover treble costs.

Provided, that this act (other than and except such clauses and provisions as are by this act made for or concerning allowing cheque-books, or for or concerning notice to be given of the time and place of election, and proceeding to election thereupon) shall not extend to any city or town being a county of itself, or to any person where the right of voting, &c. is in respect of burgage-tenure, or where such right does not require the same to be of the yearly value of 40*s*.

By 3 *Geo. 3*,

That if any mayor, &c. shall wilfully antedate any admission of any freeman, such mayor, &c. shall forfeit 500*l*. to him who shall sue.

The books and papers of *admission* of freemen to be open for inspection upon demand of a candidate, his agent, or two freemen, upon payment of 1*s*.; and copies and minutes of the admission to be given, paying reasonably for writing the same, and the books to be produced, if demanded, at every election, on penalty of 100*l*., to be recovered by action, &c. with full costs. The prosecution to be commenced within *one year*.

That the returning officer shall read this act at the time of election, where the right of election is in the whole, or in part, in freemen, as aforesaid, immediately after reading the act of 2 *Geo. 2*, c. 24.

By 3 *Geo. 3*.

That no person shall vote in respect of any annuity or rent-charge issuing out of freehold lands, &c., unless a certificate, on oath, shall have been entered twelve calendar months, at least, before the first day of election, with the clerk of the peace, or other public officer having the custody of the records within such city, &c.

s. 7.

Sheriffs offending against this act.

s. 8.

Suits commenced within 9 months.

Statutes of jeofails allowed.

Plaintiff discontinuing.

Limitation of this act.

c 15. s. 2.

Penalty of antedating the admission to freedom.

Books of admission to be open for inspection.

s. 3, 4, 5.

This act to be read by the returning officer at elections.

c. 24.

No person may vote in elections in right of annuity.

Oath.

" I, *A. B.* of _____ am really and *bonâ fide* seised of
 " an annuity [or rent-charge,] for my own use and benefit,
 " of the clear yearly value of 40*s.* above all rents and
 " charges payable out of the same, wholly issuing out of
 " freehold lands, tenements, or hereditaments, belonging
 " to *C. D.* of _____ situate, lying, and being in the
 " parish, [township, or place, or in the parishes, town-
 " ships, or places,] of *E.* in the county of _____
 " without any trust, agreement, matter or thing to the
 " contrary notwithstanding; and I, [or the person or per-
 " sons under whom I claim,] was [or were] seised of
 " the said annuity [or rent-charge] before the first day
 " of _____."

And in like
 manner as to
 qualifications
 as shall come
 by descent,
 marriage, &c.

That no person shall vote in respect of any annuity or rent-charge issuing out of freehold lands, &c. which shall come by descent, marriage, marriage-settlement, devise, or presentation to a benefice in a church, or promotion to an office, within twelve calendar months next before such election, unless a certificate, on oath, shall have been entered with the clerk of the peace, or other officer, before the first day of such election, as follows :

Oath.

" I, *A. B.* of _____ am really and *bonâ fide* seised
 " of an annuity [or rent-charge,] to my own use and
 " benefit, of the clear yearly value of 40*s.* above all rents
 " and charges payable out of the same, wholly issuing out
 " of freehold lands, [tenements, or hereditaments,] be-
 " longing to *C. D.* of _____ situate, lying, and being
 " in the parish, [township, or place, or in the parishes,
 " townships, or places] of _____ in the county of _____
 " without any trust, agreement, matter or
 " thing to the contrary notwithstanding; and I became
 " seised of the said annuity [or rent charge] on the
 " day of _____ last past, by descent [or
 " otherwise, as the case may happen]."

Officer guilty of
 any neglect to
 forfeit 100*l.*

That if any clerk of the peace shall be guilty of any wilful neglect or fraudulent practice, contrary to this act, he shall forfeit 100*l.* to the person who shall sue by action of debt, bill, &c.

Limitation of
 prosecutions.

That no person shall be liable to any forfeiture or penalty unless prosecution be commenced within twelve months.

c. 16.

By 10 *Geo. 3.*

Undue election.

On complaint of an undue election, a precise time is to be fixed for the considering thereof, and the Speaker is to give notice thereof, and order attendance of petitioners, &c.

s. 2.

But no petition is to be taken into consideration within fourteen days after appointment of the committee.

By 25 Geo. 3. For the better regulation of polls and c. 84.
scrutinies, be it enacted,

“ That every poll demanded at any election for a county, city, &c. shall commence on the day demanded, or on the next day at farthest (unless it happen on a *Sunday*, and then on the day after;) and shall be duly proceeded in from day to day, (*Sundays excepted*,) until the same be finished; but so as that no poll shall continue more than fifteen days at most (*Sundays excepted*); and if such poll continue until the *fifteenth day*, then the same shall be finally closed, at or before the hour of *three* in the afternoon of the same day; and the returning officer shall immediately, or on the day next after the final close of the poll, publicly declare the names of the persons who have the majority of votes on such poll, and shall forthwith make a return of such persons, unless the returning officer, on a scrutiny being demanded, shall deem it necessary to grant the same; in which case it shall be lawful for him so to do, and to proceed thereupon, but so as that in all cases of a general election every returning officer shall cause a return of a member, &c. to be filed in the crown-office, *on or before the day on which such writ is returnable*; and every other returning officer acting under a precept or mandate, shall make return at least *six days* before the day of the return of the writ; and so that in case of any election, and a scrutiny being granted as aforesaid, then that a return of a member or members shall be made within *thirty days* after the close of the poll (or sooner if the same can conveniently be done).”

Poll to begin, at latest, the day after demanded.

And must continue but 15 days.

Return to be made at the close of the poll, or day after,

unless scrutiny demanded.

Regulations for making returns, in case of a scrutiny.

“ That when a scrutiny shall be granted, and there shall be more parties than one objecting to votes, the returning officer or officers shall decide, alternately, or by turns, on the votes given for the different candidates who shall be parties to such scrutiny, or against whom the same shall be carried on.”

Objections to voters to be decided alternately.
s. 2.

“ And in order that the electors may have full time to poll, be it enacted, That all returning officers, unless prevented by any unavoidable accident, shall, during the continuance of the poll, on every day subsequent to the commencement of the same, cause the said poll to be kept open for seven hours, at the least, in each day, between eight in the morning and eight at night.”

Poll to be kept open 7 hours daily.
s. 3.

The poll-book ought not to be closed until *all* the voters present, *i. e.* who come in during the continuance of the poll, and offer their voices, have polled (*b*). The

Closing the poll.

(*b*) Simeon El. 163.

R

poll being taken, closed, and declared, the returning officer must make his return of the persons duly chosen, according to the mode prescribed by the writ and statutes relating thereunto.

Time fixed.

It is usual for the returning officer to fix a particular time, at a reasonable distance, for closing the poll, which is done by consent and agreement of all parties (c).

If poll be once declared.

House punish misconduct in officer.

Where the poll is once declared and acknowledged, the election is complete. And any misconduct of the returning officer is punishable, and always punished by the House (d).

Once poll closed cannot be continued.

The poll, though improperly closed by the returning officer, cannot be continued by the constable or any other person; if it is, neither the poll nor any parol evidence can be given of votes so taken (e).

Within two days after receipt of the writ, proclamation to be made of the election for county.

25 Geo. 3. c. 84. s. 4.

“ And whereas inconveniences may arise from the time
 “ allowed by the laws now in being for proceeding to an
 “ election of a knight or knights to serve in parliament, *for*
 “ *any county* or shire in *England* or *Wales*, be it enacted,
 “ That immediately after the receipt of the writ, and in-
 “ dorsing on the back thereof the day of receiving the
 “ same, as by law required, it shall be lawful for the *sheriff*
 “ of such *county* or *shire*, and he is hereby required, within
 “ *two days after the receipt thereof*, to cause proclamation to
 “ be made at the place where the ensuing election ought
 “ by law to be holden, of a special county-court to be
 “ there holden, for the purpose of such election only, on
 “ any day, (*Sunday* excepted), not later from the day of
 “ making such declaration than the *sixteenth day*, nor sooner
 “ than the *tenth day*; and that he shall proceed in such
 “ election, at such special county-court, in the same man-
 “ ner as if the said election was to be held at a county-
 “ court, or at an adjourned county-court, according to the
 “ laws now in being; provided that the usual county-court,
 “ for all other purposes, or any adjournment made thereof,
 “ shall take place, be held and proceeded in, by the sheriff
 “ or his deputy, and may from time to time be further ad-
 “ journed and proceeded in, in such and the same manner,
 “ and at the same times and places, as if the writ for the
 “ election of a knight or knights of the shire had not been
 “ received.”

which must begin between 10th and 16th day after proclamation;

provided the usual adjournment of the court take place.

“ That upon every election to be made in *Great Britain*,
 “ *Wales*, or town of *Berwick-upon-Tweed*, in all cases where
 “ no oath or affirmation of qualification, other than the

An oath to be taken previous to polling.
 s. 5.

(c) Simeon Elect. 163.

(d) Ib.

(e) Ib. 1 Doug. 191.

“ oaths or affirmations against bribery, or of allegiance, supremacy and abjuration, can now by law be required, every person claiming to give his vote at the said election shall, (if required) before he is admitted to poll, take the oath (or affirmation) following :

“ I do swear, [or, being a Quaker, do affirm], that my name is *A. B.* and that I am [specifying the addition, profession or trade of such person], and that the place of my abode is at in the county of [and if it is a town consisting of more streets than one, specifying what street], and that I have not before polled at this election ; and that I verily believe myself to be of the full age of twenty-one years.”

“ Which oath, &c. the returning officer, &c. is authorized to administer.”

“ That upon every election it shall be lawful for the returning officer, if he see cause, during the continuance of any scrutiny granted, to administer an oath to any person consenting to take the same, touching the right of any person having voted at such election, or other matter material towards carrying on such scrutiny.”

Returning officers may administer oaths during a scrutiny.
s. 6.

“ That at every election for any city, &c. every person whom the returning officer shall retain as a clerk in taking the poll, shall be sworn by such returning officer truly and indifferently to take the said poll, and to set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll, and to poll no person who is not sworn, or put to his affirmation, where, by this or any other statute, any oath or affirmation now is or hereafter shall be required ; which oath of every such poll-clerk the said returning officer is required to administer.”

Poll-clerks to take an oath for the faithful discharge of their duty.
s. 7.

“ That if any person, in taking any oath or affirmation, shall commit wilful perjury, and be convicted ; or if any person shall unlawfully procure or suborn any other person to take any such oath, &c. whereby he or she shall commit such wilful perjury, and shall be convicted, he shall incur such pains and penalties as are inflicted in and by the acts of 5 *Eliz.* and 2 *Geo. 2.*”

Persons taking, or suborning others to take, a false oath.
s. 8.

“ Provided that nothing shall extend to alter or regulate the mode or time of proceeding at any election of any member for any place where particular regulations touching the duration of polls and scrutinies are specially enacted, but that every such election shall be begun and carried on in the same manner as if this act had not been made.”

Not to extend to places where particular regulations have been enacted by statute.
s. 9.

When returns have not been duly made a select committee may be appointed conformable to 10 Geo. 3. c. 16, and 11 Geo. 3. c. 44.

Notice of the meeting of committees to be given to parties. s. 10.

Returning officer not found. s. 12.

Returning officers liable to prosecution. s. 13.

Returning officers may be sued for neglecting to return persons duly elected. s. 14.

Actions to be commenced within one year after the offence. s. 15.

Poll may be adjourned from Winchester to Newport in the Isle of Wight, &c. s. 16.

“ That if, upon any writ, *no return* shall be made to the same *on or before the day on which such writ is made returnable*, or if a writ shall have been issued, and no return shall be made to the same within *fifty-two days after the day on which such writ bears date*; or if the return made shall not be a *return of a member or members*, according to the requisition, but contain special matters only, it shall be lawful for any persons aggrieved to petition the House of Commons; and on such petition, a day and hour shall be appointed for taking the same into consideration, and notice in writing shall be forthwith given by the Speaker to the petitioners, and to the returning officer, accompanied with an order to attend the House, and a select committee shall be appointed, who are to determine whether any, and which, of the persons ought to have been returned, or whether a new writ ought to issue; which determination shall be final.”

“ When returning officers cannot be found, or do not appear at committees, other persons may be appointed to appear in their stead; and where more than one petition is presented, the House to determine whether the returning officer is to strike off from the list of members drawn by lot.”

“ That if any sheriff, &c. for any county, city, &c. shall wilfully offend against this act, he shall be liable to be prosecuted by information or indictment in the King’s Bench, &c.” or

“ That if any sheriff shall wilfully delay, or refuse to return any person who ought to be returned, such person may, in case it shall have been determined by a select committee that such person was entitled to have been returned, sue the sheriff, having wilfully delayed, neglected, or refused duly to make such return, and every or any of them, at his election, in any of His Majesty’s courts of record at *Westminster*, or the Court of Session in *Scotland*, and recover double damages, with full costs.”

“ Provided that every indictment, information, or action shall be found, filed, or commenced within *one year* after commission of the fact, or within *six months after the conclusion of any proceedings in the House of Commons* relating to such election.”

“ Provided always, that it shall be lawful for the sheriff of *Southampton*, after any poll for the county shall have closed at *Winchester*, and which shall always be within the space of *fifteen days* at the most, in the manner above required, to adjourn the poll to *Newport* in the *Isle of*

" *Wight*, in case the same shall be required, so that every
 " such adjourned poll shall commence within *four days*
 " *from the close of the poll at Winchester*, and shall not
 " continue longer than *three days at most*."

The 28 *Geo. 3.* respects petitioners complaining of c. 52.
 undue elections or returns, and the manner of proceeding on such petitions.

By the 33 *Geo. 3.* the proclamation at the place of c. 64.
 election must be made between eight in the forenoon and
 four in the afternoon, from the 25th of *October* to the
 25th of *March*, and between the hours of eight in the
 morning and six in the afternoon, from the 25th of *March*
 to the 25th of *October*, both inclusive.

By the 34 *Geo. 3.* the returning officer, at the request c. 73. s. 1.
 of the candidates, may appoint two or more persons to
 administer to the electors the oaths of allegiance, supremacy,
 the declarations of fidelity, the oath of abjuration,
 and the declaration or affirmation of the effect thereof;
 and by the 42 *Geo. 3.* persons so appointed may administer c. 62.
 all the oaths and declarations required to be taken
 by the electors.

By the 34 *Geo. 3.* the expenses incurred by returning c. 73. s. 6.
 officers are to be defrayed by the candidates (*f*).

By the 43 *Geo. 3.* so much of the 42 *Geo. 3.* c. 62, as c. 74.
 respects the bribery oath is repealed; and the oath, if
 required, shall be taken at the poll, and immediately
 before the freeholder is admitted to poll, in the manner
 prescribed by the 2 *Geo. 2.* c. 24.

Election for London if a Poll be demanded.

For regulating elections for *London*, the 11 *Geo. 1.* c. 18. s. 1.
 enacts,

That upon every election of a citizen or citizens to serve On all elections
 for the said city of *London* in parliament, &c. the presiding by the livery-
 officers shall, in case a poll be demanded, &c. appoint a men, &c. pre-
 convenient number of clerks to take the same; which clerks siding officer to
 shall take the said poll in the presence of the presiding appoint clerks
 officers, and be sworn by them truly and indifferently to take the poll, &c.
 take the same, and to set down the name of each voter,
 and his place of residence or abode, and for whom he shall
 poll, and to poll no person who shall not be sworn, or, being
 a *Quaker*, shall not affirm, according to the direction of
 None to be
 polled who
 is not sworn.

this act; and every person, before he is admitted to poll, shall take the oath following :

Liverymen's
oath at elec-
tions.

“ You do swear that you are a freeman of *London*,
“ and a liveryman of the company of and have
“ so been for the space of twelve calendar months; and
“ that the place of your abode is at .
“ in and that you have not polled at this
“ election. So help you God.”

On refusal to
swear, poll to
be rejected.
s. 1.

And if any person shall refuse or neglect to take the oaths hereby appointed to be taken, then the poll or vote of such person or persons so neglecting, &c. shall be void.

The oath 1 G. 1.
c.13. to be taken,
if required.

That at all times, upon every election, every person having a right to vote or poll, before he be admitted to vote or poll thereat, shall (if required) first take the oaths in and by an act made in the first year of His Majesty's reign, intituled, “ An act for the further security of His Majesty's person and government, and the succession of the crown,” &c., appointed to be taken, or, being one of the people called *Quakers*, shall, if required, affirm the effect thereof; and if any person or persons shall refuse to take the said oaths by the said act appointed to be taken, or affirm, that then the poll or vote of such person shall be void; and the presiding officers are authorized to administer the oaths and affirmations; and if any such presiding officer shall refuse or offend in the premises contrary to this act, every such officer shall forfeit 60*l.*, besides costs of suit.

Presiding officer
to administer
the oaths on
penalty of 60 *l.*

Penalty on
falsely taking
the oaths, or
suborning.

That if any person shall wilfully, falsely and corruptly take the said oaths or affirmations, and be convicted by indictment, &c., or if any person shall corruptly procure or suborn any other person to take the said oaths or affirmations, whereby he shall wilfully and falsely take the said oaths or affirmations, and the person so procuring or suborning shall be convicted, every person so offending shall incur and suffer such penalties, &c. as persons convicted of wilful and corrupt perjury at the common law are liable unto.

s. 3.

Presiding offi-
cer how to act
if a poll be
demanded.

And, to the intent that the poll be duly taken, be it further enacted, that if a poll be demanded, the presiding officer shall begin such poll the day the same shall be demanded, or the next day following at farthest, unless the same shall happen on a *Sunday*, and then on the next day after, and shall duly proceed thereon from day to day (*Sundays* excepted) until such poll be finished; and shall finish the poll at elections by the liverymen within seven days, exclusive of *Sundays*; and the poll at the wardmote within three days, exclusive of *Sundays*, after the com-

When the poll
to be finished,
&c.

mencing the same respectively ; and shall, upon adjourning the poll on each day, at all and every the elections aforesaid, seal up the poll-books with the seals, and in the presence of such of the respective candidates, or persons deputed by them, as shall desire the same, and the said poll-books shall not be opened again, but at the time and place of meeting, in pursuance of such adjournment : and after the said poll is finished, the said poll-books, being sealed as aforesaid, shall, within *two days* after, be publicly opened at the place of election, and truly cast up, and within *two days* after the numbers of the votes shall be declared at the place of election by the officer ; and if a scrutiny shall, upon such declaration made, be demanded, the same shall be granted and proceeded upon ; and the respective candidates shall immediately nominate to the presiding officer any number of persons qualified to vote at such election not exceeding six, to be scrutineers for and on behalf of the candidate or candidates on each side, to whom the presiding officer shall, within six days after such scrutiny demanded, upon request and at the charge of the candidates, &c., deliver a true copy, signed by such officer, of the poll taken ; and all scrutinies taken to be made by the liverymen of the said city shall begin within *ten days* after the delivery of the copies of the said polls, and be proceeded on day by day (*Sundays excepted*), and shall be finished *within fifteen days* after the commencement of such scrutiny ; and thereupon the presiding officer shall, *within four days* after the finishing such scrutiny, publicly declare which of the candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny ; and on the election of any officer at the respective wardmotes of the said city, if a scrutiny be demanded, the candidates, &c. shall, within ten days next after the receipt of the copy of the polls, deliver to the presiding officer the names in writing of the persons polled, against whose votes they shall object, with objections against each respective name ; and the presiding officer shall, within three days then next following, at the request and charges of any candidate or scrutineers, deliver to him or them one or more true copy or copies (signed) of the paper containing such names and objections ; and the said presiding officer, within ten days then next following, (*exclusive of Sundays*), after having fully heard such of the said candidates as shall desire the same, or some person appointed by him or them, touching such objections, shall, at the place of election, openly declare which of the said candidates is or are duly elected, and the number of legal votes for each candidate appear-

If a scrutiny be demanded.

Scrutineers not to exceed six on each side.

Scrutinies when to begin, and when to be finished on election by liverymen.

Scrutinies on elections at wardmotes.

True copies of the objections against the pollers.

Penalty 200*l.*
with costs.

s. 4.

A true list to be
given of the
voters disal-
lowed.

s. 5.

Mayor to issue
precepts to the
companies to
bring in lists.

s. 6.

No persons
have a right to
vote who have
not been upon
the livery 12
calendar
months, &c.
and who within
two years have
been discharged
from taxes.

s. 14.

Forfeitures
how applied.

s. 25.

c. 54.

ing to him or them upon such scrutiny; and if the said presiding officer shall offend, he shall forfeit 200*l.*, with full costs of suit, over and above all other penalties inflicted by any other act.

That after any election made and scrutiny taken, the presiding officer shall deliver, under his hand, a true list of the voters disallowed, to any of the candidates who shall, upon the final declaration of the election, demand the same, *within six days after such demand made*, such candidate paying for the same: provided always, that no such list as is directed shall be admitted to be given in evidence on any action or occasion whatsoever.

That the mayor of the city of *London* for the time being, upon request to him made by any candidate, &c. at any election of a citizen to serve in parliament for the said city, or of a mayor, or any other officer or officers to be chosen by the liverymen thereof, where a scrutiny is demanded and granted, shall issue his precepts as has been usual, requiring the masters and wardens of the livery companies of the said city respectively to cause their clerks forthwith to return to him two true lists of all the liverymen of their respective companies; and the said clerks shall return such their respective lists upon oath *within three days after the receipt of any such precepts*; one of which lists so returned the said mayor shall forthwith deliver to the candidate or candidates on each side at such election, or to his or their agent or agents.

No person shall have a right to vote at any election by the liverymen who have not been upon the livery *twelve calendar months*, and who shall not have paid their livery fines, or who shall have received such fines back again in part, or in all; or shall have had any allowance in respect thereof; and no person shall have a right to vote who have *within two years* next before requested to be, and have been, discharged from paying taxes, or have, within that time, received *alms*. And all the forfeitures herein shall be distributed, one third to the king, one third to the chamberlain, for the use of the city, and the remaining third to the prosecutor, who will sue *within six calendar months after incurred*.

For elections of citizens for *Coventry*, see 21 *Geo.* 3.

Of the Return.

When election
is closed.

The words of the writ, so far as they relate to the return, are,

“ And the names of the knights, citizens and burgesses
“ so to be elected, you cause to be inserted in certain in-

“ dentures, to be thereupon made between you and those
 “ who shall be present at such election, and them at the
 “ day and place aforesaid you cause to come, &c.; and
 “ that the election in your full county so made, distinctly
 “ and openly, under your seal and the seals of those who
 “ shall be present at such election, you do certify to us,
 “ in our Chancery, at the day and place aforesaid, without
 “ delay, remitting to us one part of the aforesaid inden-
 “ tures annexed, with these presents, together with this
 “ writ.”

The certificate of the election is required to be the same both in *county* and *borough* elections, that is, by *indenture*, under the seals of the electors, and of the returning officer, who seals a counterpart thereof. This practice has been constantly complied with, and seems analogous to proceedings of inquisition before the sheriff and coroner, who return their inquests under seal. Any other mode of making the return has been held bad, but amendable.

The indenture certifying the election, being duly signed and sealed, must be annexed to the writ, and returned, together with it, to the clerk of the crown in Chancery; and where there is occasion to make another return, the order is, that the return annexed shall be taken off the file, and the indenture of return, made by the legal officer, be annexed to the writ in its stead.

With respect to false returns, *vide* 23 *H.* 6, c. 14; 7 & 8 *W.* 3, c. 7, s. 1, made perpetual by 12 *Ann.* c. 15, s. 1, 1 *Wils.* 125; and double returns, see 7 & 8 *W.* 3, c. 7; and if no return made, see 25 *Geo.* 3, c. 84, s. 10. A false or double return may be amended at the bar of the House (*g*).

——— } *J. P.* esq. sheriff of the county aforesaid,
 to wit. } having received His Majesty's writ, under
 the great seal of *Great Britain*, for the electing two knights
 to serve for this county in the parliament to be holden at the
 city of *Westminster*, on the day of next, do,
 in obedience to the said writ, and of the several statutes
 in that case made, hereby proclaim and give public notice,
 that, at a special county-court, which will be held at
 in and for the said county, on the day of
 this instant , at ten of the clock in the forenoon,
 pursuant to the statute in that case made and provided,
 I shall proceed to such election, when and where all per-

Precept for the election of two members to serve in parliament at the general election for knights of the shire.

sons interested therein will be heard, and are to give their attendance accordingly. Dated the day of 18
J. P. esq. sheriff.

The indenture.

This indenture, made in full county, at a special county-court, for the county of held at in the said county, pursuant to the statute in that behalf made, on the day of in the year of our lord between *J. P.* sheriff of the county aforesaid, of the one part, and [here put twenty or thirty of the most respectable names], with many others, freeholders of the said county of of the other part, witnesseth, that by virtue of His Majesty's writ under the great seal of *Great Britain* to the said sheriff directed, and hereunto annexed, for the electing of two knights of the aforesaid county to serve for the said county in His Majesty's parliament, to be holden at the city of *Westminster*, on the day of next: We therefore, the said sheriff, and the said [twenty or thirty other names as before mentioned], and many other freeholders of the said county, (the major part of the whole county aforesaid) being this present day, at aforesaid, sworn and examined, according to the force, form and effect of the said writ, and of divers statutes in that case lately made and provided, and according to the directions of the said writ, have (proclamation of the premises being first made) elected *G. H.* of in the county of esq. and *J. K.* of in the said county, esq. the most fit and discreet knights of the shire of the aforesaid county, to attend at the said parliament; giving and granting to the said knights full power and sufficient authority, for themselves and the commonalty of the aforesaid county, to do and consent to those things which in His Majesty's said parliament, by the common-council of the realm (by the blessing of God) shall happen to be ordained upon the affairs in the said writ specified. In testimony whereof, as well the hand and seal of the office of the said sheriff, as also the hand and seal of the other parties above-named, are hereunto interchangeably set, the day and year first above-written.

J. P. esq. sheriff.

A. B. *G. H.* *N. O.* &c. &c.

Indenture for returning one knight of the shire for the county in the room of one who has been called up to the House of Lords.

This indenture, made in full county, at a special county-court for the county of held at in the said county, pursuant to the statute, on the day of in the year of the reign, &c. and in the year of our Lord between sheriff of the county aforesaid, of the one part, and [here put twenty or thirty names], with many others, freeholders of the said

county, of the other part, witnesseth, that by virtue of His Majesty's writ under the great seal of *Great Britain* to the said sheriff directed, and hereunto annexed, for the electing (in the place of _____ esq. who was lately chosen one of the knights for the said county for His Majesty's present parliament, but is now baron _____ of

_____ in the said county, and one of the peers of the kingdom of the upper house of the said parliament, and for that reason is removed from the lower house of the said parliament) of one other fit and discreet knight of the aforesaid county, to serve for the said county in His Majesty's said parliament, which, at the time of the issuing the said writ, was holden at His Majesty's city of *Westminster*: We therefore, the said sheriff, and the said [here put the names aforesaid], and many others, freeholders of the said county, (the major part of the whole county aforesaid), being this present day, at _____ aforesaid, sworn and examined, according to the force, form and effect of the said writ, and of divers statutes in that case lately made and provided, and according to the directions of the said writ, have (proclamation of the premises being first made) elected sir _____ bart. of _____ a fit and discreet knight of the aforesaid county, to attend at the said parliament; giving and granting to the said knight full power and sufficient authority, for himself and the commonalty of the aforesaid county, to do and consent to those things which in His Majesty's parliament aforesaid, by the common-council of the realm (by the blessing of God) shall happen to be ordained upon the affairs in the said writ specified. In testimony whereof, as well the hand and seal of the office of the said sheriff, as also the hands and seals of the other parties above-named, are hereunto interchangeably set, the day and year first above written.
J. B. esq. sheriff.

A. B. G. H. &c. &c.

_____, to wit, G. K. esq. sheriff of the county aforesaid, to the bailiff of the borough of _____ in the said county, greeting: Know ye, that I have received a certain writ of our lord the king to me directed, the tenor whereof followeth in these words; to wit, [*William the fourth, &c.* set forth the writ *verbatim*], and because the execution of the said writ, as to the borough of _____ belongs to you: therefore, by virtue of the said writ, I require you, that you forthwith cause one burgess to be elected for the said borough, according to the command of the said writ; and how this my warrant shall be executed, you shall make known to me immediately after the said election made, so that I may certify the same, together with

Precept and return of members to serve in parliament for a borough, directed to the bailiff.

the said writ and this precept, to our lord the king in his *Chancery* forthwith. Given under the seal of my office the day of 18

By the same sheriff.

(Indorsed).

Bailiff's indorsement thereon.

The day of at o'clock: Received this precept from the under-sheriff of the county of

W. P. bailiff of the said borough.

Proclamation made on the day of 18 at the usual place, within the borough of *R.* within mentioned, to proceed to election there on the day of at 11 of the clock in the forenoon of the same day.

W. P. bailiff.

Return of the precept.

The execution of this precept appears in a certain schedule hereunto annexed.

W. P. bailiff.

Return to the writ.

The execution of this writ appears in certain schedules hereunto annexed.

Indenture.

This indenture, made at the borough of in the county of the day of in the year of the reign of, &c. and in year of our Lord 18 ; between *G. K.* esq. sheriff of the said county, of the one part, and *W. P.* bailiff of the said borough, and *C. K.* esq. and *L. M.* esq., *G. H.* esq., and *T. L.* esq., and others, burgesses of the aforesaid borough, by virtue of a certain precept, under the seal of the said sheriff made, and directed to the said bailiff, bearing date the day of instant, have freely and indifferently elected *A. K.* esq. and *G. N.* esq. burgesses of the borough aforesaid, the most sufficient and discreet to be at the parliament of our said lord the king, to be holden at *Westminster*, the day of next ensuing, which said *A. K.* and *G. N.* have full and sufficient power for them the said electors, for themselves and the commonalty of the said borough, to do and consent to those things which then and there, by the common-council of the kingdom of *Great Britain* (by the blessing of God) shall happen to be ordained upon the affairs in the said parliament to be treated of. In witness whereof, to one part of these presents remaining with the said sheriff, as well the said bailiff as the said burgesses have set their hands and seals, and to the other part remaining with the said bailiff and burgesses, the said sheriff hath set his seal, the day and year first above written.

The persons must be free citizens or burgesses of the town having due election.

+ *W. B.* bailiff,
and twenty-seven others.

——— } C. B. esq. sheriff of the county aforesaid, To
 to wit. } the mayor of the city of *R.* greeting. By vir-
 tue of His Majesty's writ under the great seal of *Great*
Britain to me directed, for the electing of two citizens to
 serve for the city of *R.* aforesaid in a certain parliament,
 ordered by His Majesty to be holden at His Majesty's city
 of *Westminster*, on the day of next
 ensuing. These are to will and require you, that (procla-
 mation within the said city of the day and place of election
 being first made) you cause freely and indifferently to be
 elected two citizens of the most sufficient and discreet, by
 those who at such proclamation shall be present, according
 to the form of the statutes in that case made and provided;
 and the names of those citizens so to be elected (whether
 they be present or absent) you cause to be inserted in cer-
 tain indentures, to be thereupon made, between me and
 those who shall be present at such election: and then, at
 the day and place aforesaid, that you cause to come, in
 such manner that the said citizens, for themselves and the
 commonalty of the said city, may have from them full and
 sufficient power to do and consent to those things which
 then and there, by the common-council of the kingdom,
 (by the blessing of God) shall happen to be ordained; but
 you are not to elect me, or any other sheriff of this king-
 dom; and the said election you are forthwith to certify to
 me, sending to me one part of the said indentures annexed
 to this precept, that I may certify the same to His Majesty,
 in his Chancery: hereof you are not to fail. Given under
 the seal of my office, the day of in the
 year of the reign of king *William* the Fourth, and
 in the year of our Lord 18

Precept to the
mayor of the
city of *R.* to
return two
members.

By the same sheriff.

Received of the within-named sheriff this precept, by
 the hands of Mr. *A. B.* on the day of
 18 at of the clock in the fore-
 noon, by me, *J. J.* mayor of *R.*

The execution of this precept appears in a certain schedule hereunto annexed.

J. J. mayor of *R.*

Return of pre-
cept to the
sheriff.

This indenture made, &c. between, &c. witnesseth, that
 by virtue of a warrant to me directed, from *G. B.* esq.
 sheriff of the county of *R.* for the electing and choosing
 two citizens, men of good understanding, wit, knowledge,
 and discretion, for causes concerning the weal public of
 the realm, to be at His Majesty's high court of parliament,
 to be holden at his city of *Westminster*, on the
 day of next ensuing; I, *J. J.* mayor of the
 city of *R.*, with the whole assent and consent of the rest of

Indenture of
election by a
mayor.

the citizens there, have made choice and election of *G. H.* of, &c. esq. and *J. K.* of, &c. esq. to be citizens for our said city of *R.* to attend at the said parliament, according to the tenor of the said warrant to me directed in that behalf. In witness whereof, I have to these presents set our common seal of our said city, the day and year first above written.

By the constables and burghers.

This indenture made, &c. between *H. A.* esq. high sheriff of the county of _____ of the one part, and *H. T.* and *W. S.* junior, and constables of the borough and parish of *A.* in the said county of *R.*, and *F. L.* esq. *R. C.* gent. (with forty others named), and others the burghers and inhabitants of the said borough of *A.*, of the other part, witnesseth, that by virtue of a precept to the said constables directed, and delivered by the said sheriff, under the seal of his office in that behalf, they the said constables, burghers and inhabitants have, of their full consent, duly chosen Sir *J. W.* bart. and *S. M.* esq. two burgesses, fit and discreet men to serve for the said borough in the parliament to be holden at His Majesty's city of *Westminster*, the _____ day of _____ now next ensuing, according to the tenor of the said precept, giving, and by these presents granting, to the said two burgesses so chosen, full power, for themselves and the commonalty of the said borough, to do and consent as in the said precept is specified. In witness whereof, to one part of these precepts remaining with the said sheriff, they the said constables, burghers and inhabitants have hereunto set their hands and seals, and to the other part remaining with the said constables, the said sheriff hath set the seal of his office, the day and year first above written.

Subscribed by the said constables and forty-seven others.

Precept from the sheriff of Middlesex to the bailiff of Westminster, for the election of one citizen for the said city.

Middlesex, to wit. Sir *C. A.* knight, and sir *R. G.* knight, sheriff of the said county, to the bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter* at *Westminster*, in the said county, greeting. Know, that I have received a certain writ of our lord the king, to me directed, the tenor whereof followeth [here state the writ *verbatim*]; and because the execution of the said writ belongs to you, therefore, by virtue of the said writ, I require you, that you forthwith cause a citizen to be elected for the said city, in the place of the said *P. W.* according to the command of the said writ: and how this my warrant shall be executed you shall make known to me immediately after the said election made, so that I may certify the same, together with the said writ, and this

precept return to our said lord the king in his Chancery forthwith. Hereof fail not: This is your warrant, given under the seal of my office, this day of
18

By the same sheriff.

The execution of this writ appears in a certain schedule hereunto annexed.

J. C. Esq., bailiff.

Return of precept.

This indenture, make in the liberty of *Westminster*, in the county of *Middlesex*, the day of in the year of the reign of, &c., between Sir C. A., knight, and Sir R. G., knight, sheriff of the county of *Middlesex*, of the one part, and I. C., esq., bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster*, in the said county, Sir I. C., baronet, Sir C. D., knight of the most honourable order of the Bath, the honourable W. L., G. S., F. R., F. H. and many others, citizens, burgesses and inhabitants of the city, town and borough of *Westminster*, of the other part, *witnesseth*, that, by a certain precept, directed from the said sheriff to the bailiff, and sewed to this indenture, (proclamation in the said precept first mentioned, and of the day and place, as in the said precept is directed, first being made,) the citizens who were present at the said proclamation having freely and indifferently, according to the form of the statute in that case made and provided, and according to the tenor and effect of the aforesaid precept, and of the writ in the said precept recited, chosen one citizen of the most discreet and sufficient of the city and liberty aforesaid, (that is to say,) the honourable E. C., esq.; to which said E. C. so elected, the aforesaid citizens have given and granted full and sufficient power, for themselves and the commonalty of the city, town, borough and liberty aforesaid, to do and consent to those things which, at the said parliament, by the common-council of the said kingdom (with God's assistance) shall happen to be ordained upon the affairs in the said precept specified, according to the form and effect of the said precept. In *witness* whereof, as well the said sheriff as the aforesaid bailiff, citizens, burgesses and inhabitants of the city, town, borough and liberty aforesaid, to these indentures their seals have interchangeably put, the day and year first above mentioned.

The indenture.

This indenture made, &c. witnesseth, that, by virtue of a warrant to me directed from Sir A. B., knight, sheriff of the county of *Cambridge*, for the electing and choosing of two burgesses, men of good understanding, wit, knowledge and discretion, for causes concerning the weal pub-

Indenture for return of citizens and burgesses, taken from Dalt. 336.

lic of the realm, to be at His Majesty's high court of parliament, to be holden at *Westminster*, the day of next coming, I., *A. B.*, mayor of the borough or town of *Cambridge*, with the whole assent and consent of the rest of the burgesses there, have made choice and election of *C. D.* of esq., and of *I. D.* of esq., to be burgesses for our said borough of *Cambridge*, to attend at the said parliament, according to the tenor of the said warrant to me directed in that behalf. In witness whereof, I have to these presents set our common seal of our said borough, the day and year first above written.

c. 13. s. 4.

By 34 & 35 *H.* 8,

Chester, two knights and two burgesses for the city.

“ The county palatine of *Chester* shall have two knights, and likewise two citizens, to be burgesses for the city of *Chester*, to be chosen by process to be awarded by the Chancellor of *England* unto the chamberlain of *Chester*, his lieutenant or deputy; and likewise process to be made under like form as is used within the county-palatine of *Lancaster*, or any other county and city where shall be knights and burgesses of parliament.

And *vide stat.* 13 *Geo.* 2, c. 18, s. 12.

c. 23. s. 7.

By 10 *Ann.*

Sheriff to cause seven tables to be made at the cost of the candidates.

The sheriff of *Chester*, against every election of knights of the shire, shall cause seven tables, and no more, to be made at the cost of the candidates, within the shire-hall of the county, for taking the poll, *viz.* two at the upper end, two at each side, and one at the lower end of the hall.

c. 9.

By 25 *Car.* 2,

Durham, two knights, two for the city.

The county-palatine of *Durham* may have two knights for the county, and the city of *Durham* two citizens, to be burgesses for the same city, to serve in parliament, to be elected by writ awarded to the lord Bishop of *Durham*, or his Chancellor of the county, and precept thereupon to the bishop, or his temporal chancellor to the sheriff: the elections of knights to be made by the greater number of freeholders, as in other counties, and the election of burgesses for the city of *Durham* to be made by the major part of the mayor, aldermen and freemen; which knights and burgesses shall be returned by the sheriff into the Chancery, upon the like pains as the sheriff of any other county.

For the county to be chosen by freeholders.
City to be chosen by the mayor, &c.
18 *Geo.* 2. c. 18. s. 2.

c. 7. s. 1.

By 2 *Will.* & *M.* st. 1.

Cinque Ports.

Whereas the lord wardens of the Cinque Ports have claimed, as of right, a power of nominating to each of the Cinque Ports, the two ancient towns and their members, one person whom they ought to elect as a baron or member of parliament, contrary to the ancient usage and freedom

of elections, "It is declared, that all such nominations are
"contrary to law, and void."

s. 2.

Two knights to
be chosen for
Monmouthshire;
one burgess for
the borough.

27 H. 8. c. 26.

s. 28.

One for shire of
Brecknock, &c.
and every other
shire.

s. 29.

All the king's
subjects in
Wales, shall find
c. 26. s. 110.

Haverfordwest.
s. 111.

For assessing
and levying of
knights' wages,
sheriffs to make
proclamation.

23 H. 6. c. 10.

c. 13. s. 1.

For payment of
wages in Wales.

For all parliaments two knights shall be chosen for the
shire of *Monmouth*, and one burgess for the borough of
Monmouth; the burgesses fees to be levied as well within
the borough of *Monmouth*, as within all other ancient
boroughs within the said shire.

One for every of the shires of *Brecknock*, *Radnor*,
Montgomery and *Denbigh*, and for every other shire
within *Wales*; and for every borough being a shire town,
except *Merioneth*, one burgess; fees to be levied as well
of the shire towns as of all other ancient boroughs within
shires.

All the king's subjects in *Wales* shall find at all par-
liaments *knights*, *citizens*, and *burgesses*.

knights, &c. 34 & 35 H. 8.

The town of *Haverfordwest* one burgess at every par-
liament.

The sheriff, in the next county-court after deliverance of
the writs for levying the knights' wages, shall make procla-
mation that the coroners, and every chief constable of the
peace, and the bailiffs of every hundred, and all others
which will be at the assessing of the wages, shall be at the
next county; and the sheriffs, under-sheriff, coroner or
bailiffs, shall be there at the same time, on pain of 40s.,
at which time the sheriff, in presence of them and of the
suitors in full county, shall assess every hundred to pay
a certain sum for the wages, so that the whole sum of all
the hundreds do not exceed the sum due; and after that,
in same county, shall assess every village to a certain sum,
so that the whole of the towns within any hundred do not
exceed the sum assessed upon the hundred. And the
sheriffs, nor none other officer, shall levy more of any vil-
lage than what thereunto they were assessed; and if any
do assess any hundred or village otherwise than aforesaid,
forfeit 20*l.* to the king, and to any man that will sue 10*l.*
The sheriffs shall levy the money assessed upon the villages
as hastily as they well may, and the same shall deliver to
the knights, upon the said pains.

The 34 & 35 H. 8. gives power to every of the twelve
shires of *Wales*, and in the county of *Monmouth*,

To levy the knights' fees and wages, and to pay the
same within two months after the writ delivered, and in
default to forfeit 20*l.*, one moiety to the king, and the
other to him who sues. If default be for longer than two
months, to forfeit 20*l.* every month.

Mayor, &c. to
levy and pay
wages to bur-
gesses.
s. 2.

Rates for the
burgesses in
Wales.
s. 4.

Former wages
allowed.

Present wages.

Cambridgeshire
excused.

Negligent
return.
5 R. 2. c. 4.
10 & 11 W. 3.

11 H. 4. c. 1.
c. 15.

Traverse
inquest.
6 H. 6. c. 4.

Returns made
contrary to the
other statute.
23 H. 6. c. 15.

Every mayor, bailiff, and other head officers of cities and towns in the said twelve shires, and *Monmouth*, within like space of two months after receipt of writ, shall levy and pay the wages to their burgesses, under like pain.

Provided two justices of the peace in every shire in *Wales* and *Monmouth* shall have power to tax every city and town for the rates that the cities and boroughs shall pay towards the burgesses within the shire, &c., which rates shall be again rated on the inhabitants of the cities and boroughs aforesaid, and mayor, &c. collect the same.

It appears that in *Ed.* 3d's time, 4s. a day was allowed a knight of a shire, and 2s. for a citizen or burgess (*a*). But now it seems 13s. 4d., and 10s. for a baron or burgess (*b*). And the sheriff may distrain the goods of the town, or any of the town, for the wages of a knight, or the cattle (*c*), and may sell the same.

The 34 H. 8. c. 24, excuses the inhabitants of the county of *Cambridge*; and the manor of *Burlewes* in *Madingly* is charged with 10*l.* yearly for ever, for the wages of the knights.

As to the Return.

If the sheriff be *negligent* in making return he shall be amerced, or punished.

If a sheriff make not a return on or before the parliament is to meet, or in convenient time, not exceeding 14 *days* after election on a new writ, he shall forfeit 500*l.*, a moiety to the king and a moiety to the informer.

False Return.

Justices of assize may inquire of returns made to writs of parliament, and if found by inquest that the return is contrary to 7 H. 4. the sheriff shall incur 100*l.* fine to the king.

But the sheriff may traverse such inquest of office before the justices of assize.

If any sheriff make a return contrary to 23 H. 6. or other statutes of election, &c. he shall incur the penalty of 8 H. 6. 7, and pay to every person chosen and not duly returned, 100*l.* with costs, by action of debt against the sheriff, his executors, &c., by the party grieved, if he sue

(*a*) 4 Inst. 16.
(*b*) Dalt. 311.

(*c*) Bro. Distr. 95. Dalt. 345.

in three months after the beginning of the parliament, or in his default, by any that will sue.

Suit to be in three months.

And if any mayor, &c., return to the sheriff any *not duly chosen*, he shall forfeit 40*l.* to the king, and 40*l.* to every person chosen and not returned, to be recovered *ut supra*; and if any returned be put out, and another be put in his place, he that is put in his place, if he take upon himself to be knight, citizen, or burgess, forfeits 100*l.* to the king, and 100*l.* to him put out, to be recovered, &c.

Penalties on mayor for false return.

By 7 & 8 *W. 3. c. 7.* continued by 12 & 13 *W. 3. c. 3. s. 5*, and afterwards by 12 *Ann. sess. 1. c. 15*, made perpetual, a *false return* is against law, and any making or procuring it, may be sued by the party grieved, who shall recover *double damages*, with costs.

False return is against law; may recover damages.

All contracts, &c., to procure a return are void, and he who makes them forfeits 300*l.*, one third to the king, a third to the poor, and one third to the informer; *and a return contrary to the last determination of the House* is a *false return*. Any officer who wilfully, maliciously and falsely returns *more persons* than he ought, forfeits *double damages*, with costs, to the party grieved, who may sue the officer, or him who procures such return, at his election.

Contracts to procure a return void.
Return contrary to the last determination, a false return.

The House expects the sheriff to make a return according to law, and will not give him directions in case of difficulty; though the mayor to whom the precept was directed dies, and yet the burgesses go to election, and part return one by one in due turn, and the other part return another by another in due turn (*d*).

Sheriff to return according to law; House will not give directions.

Remedy for false Return, &c.

If a sheriff makes a *false return*, debt lies for the 100*l.* upon 23 *H. 6. c. 15 (e)*.

Debt lies.

So an action lies upon the 7 & 8 *W. 3.* for a *false return*, if the plaintiff makes his case pursuant to the statute (*f*).

So 7 & 8 *W. 3. c. 7.*

But an action does not lie for a false return, if it be not founded upon some statute (*g*).

But if not founded on some statute.

Nor since the 7 & 8 *W. 3.* where the return was conformable to the House of Commons (*h*).

Nor if conformable to House.
c. 7.

(*d*) 9 Jac. 1699.

(*g*) Salk. 505.

(*e*) Plowd. Com. 118, 130.

(*h*) Lut. 189.

(*f*) Lutw. 185. Salk. 304.

Double damages
for false return.

Double damages may be recovered for any false return, though there is no resolution of the House of Commons relating to the right of election to that place (*i*).

Double returns.
An action will
lie for false or
double return.

It is said an action at common law does not lie for a double return (*k*). But *Willes*, C. J., said an action at common law will lie for a *false*, or for a *double return*; for there is *damnum cum injuria* in both cases (*l*).

Courts at West-
minster are
not bound by
resolutions of
the House.

The courts of *Westminster* are not bound by resolutions of the House of Commons relating to actions at common law, for such returns; and the party may proceed there, notwithstanding the order of the House.

c. 84.
Returns after
determination
by a select
committee.

For any offence against 25 *Geo.* 3, the returning officer is made liable to prosecution by information or indictment; and if he neglect or refuse duly to return any person who ought to be returned for any county, &c., every such person, in case it shall have been determined, by a select committee appointed, that such person was entitled to have been returned, may sue the sheriff, &c., and shall recover double damages, with full costs.

s. 24.

A List of the Counties, Cities, and Boroughs of England, in the Order in which their Representatives are called over in the House:

Bedfordshire.—Bedford.

Berks.—Reading; Abingdon; Windsor; Wallingford.

Bucks.—Buckingham; Wycomb; Aylesbury; Marlow; Wendover; Agmondesham.

Cambridge.—Cambridge Un.; Cambridge T.

Cheshire.—Chester.

Cornwall.—Launceston; Liskeard; Lestwithiel; Truro; Bodmin; Helston; Saltash; East-Looe; West-Looe; Camelford; Penryn; Tregony; Bossinney; St. Ives; Fowey; St. Germans; Mitchell; Newport; St. Mawes; Callington.

Cumberland.—Carlisle; Cockermouth.

Derby.—Derby.

(*i*) *Wynne v. Middleton*, 1 Wils. 125..

(*k*) 2 Vent. 37. Salk. 503. 3 Lev. 29. 2 Lev. 114.

(*l*) 1 Wils. 127.

Devon.—Ashburton ; Tiverton ; Dartmouth ; Okehampton ; Honiton ; Plymouth ; Beeralston ; Plympton ; Totness ; Barnstaple ; Tavistock ; Exeter.

Dorset.—Dorchester ; Lyme ; Weymouth and Melcombe ; Bridport ; Shaftsbury ; Wareham ; Corfe-Castle ; Poole.

Durham.—Durham.

Ebor, or Yorks.—Aldborough ; Boroughbridge ; Beverley ; Hedon ; Knaresboro' ; Malton ; Northallerton ; Pontefract ; Richmond ; Ripon ; Scarborough ; Thirsk ; York ; Kingston.

Essex.—Colchester ; Malden ; Harwich.

Gloucester.—Tewksbury ; Cirencester ; Gloucester.

Hereford.—Hereford ; Leominster ; Weobly.

Hertford.—Hertford ; St. Albans.

Huntingdon.—Huntingdon.

Kent.—Rochester ; Queenborough ; Maidstone ; Canterbury.

Lancashire.—Lancaster ; Preston ; Liverpool ; Wigan ; Clitheroe ; Newton.

Leicester.—Leicester.

Lincoln.—Stamford ; Grantham ; Boston ; Grimsby ; Lincoln.

Middlesex.—Westminster ; London.

Monmouth.—Monmouth.

Northfolk.—Lynn ; Yarmouth ; Thetford ; Castle-Rising ; Norwich.

Northampton.—Peterborough ; Northampton ; Brackley ; Higham-Ferrers.

Northumberland.—Morpeth ; Newcastle-upon-Tyne ; Berwick.

Nottingham.—East Retford ; Newark ; Nottingham.

Oxon.—Oxford Un. ; Oxford City ; Woodstock ; Banbury.

Rutland.

Shropshire.—Shrewsbury ; Ludlow ; Bridgnorth ; Wenlock ; Bishop's-Castle.

Somerset.—Taunton ; Ivelchester ; Milborne ; Wells ; Bridgwater ; Bath ; Minehead ; Bristol.

Southampton, or Hants.—Winchester; Portsmouth; Newport; Yarmouth; Newtowne; Lymington; Christchurch; Andover; Whitchurch; Petersfield; Stockbridge; Southampton.

Stafford.—Stafford; Tamworth; Newcastle; Litchfield.

Suffolk.—Ipswich; Dunwich; Orford; Aldeburgh; Sudbury; Eye; Bury.

Surrey.—Gatton; Haslemere; Blechingly; Reigate; Guildford; Southwark.

Sussex.—Horsham; Bramber; Shoreham; Midhurst; E. Grinstead; Steining; Arundell; Lewes; Chichester; Seaford.

Warwick.—Warwick; Coventry.

Westmorland.—Appleby.

Worcester.—Evesham; Droitwich; Bewdley; Worcester.

Wilts.—New Sarum; Devizes; Marlborough; Chippenham; Calne; Malmesbury; Cricklade; Hindon; Old Sarum; Heytesbury; Westbury; Wootton Bassett; Ludgershall; Wilton; Downton; Great Bedwin.

Yorkshire, see Ebor.

The Cinque Ports, Barons of.—Hastings; Winchelsea; Rye; Romney; Dover; Sandwich; Hithe.

For Wales.

Anglesey - - -	1	Flint - - -	1
Beaumaris - - -	1	Flint, borough - -	1
Brecknock - - -	1	Glamorgan - - -	1
Brecknock, borough -	1	Cardiff, borough -	1
Caermarthen - - -	1	Merionethshire - -	1
Caermarthen, borough	1	Montgomery - - -	1
Caernarvon - - -	1	Montgomery, borough	1
Caernarvon, borough -	1	Pembroke - - -	1
Cardigan - - -	1	Pembroke, borough -	1
Cardigan, borough -	1	Haverfordwest, borough	1
Denbigh - - -	1	Radnor - - -	1
Denbigh, borough -	1	New Radnor, borough	1

Juries.

TRIALS by jury in civil causes are of two kinds; *extraordinary* and *ordinary*. In civil causes two kinds.

The first species of *extraordinary trial* by jury is that of the *grand assize*, instituted by *Henry the Second*, instead of the barbarous and unchristian custom of duelling. For this purpose a writ *de magnâ assizâ eligendâ* is directed to the sheriff (*a*), to return *four knights*, who are to elect and choose twelve others to be joined with them, and these altogether form the grand assize, or great jury, which is to try the matter of right, and must consist of *sixteen jurors* (*b*). Grand assize, first species of extraordinary trial.

Another species of extraordinary juries is to try an attaint, which is a process commenced against a former jury for bringing in a false verdict, and consists of twenty-four of the best men of the county, who are to hear and try the goodness of the former verdict: this is now disused, a better remedy for the parties being adopted. The second, trial on attaint.

With regard to the *ordinary trial* by jury in *civil cases*, it is this: when the parties are at issue to the country, Ordinary trial.

“The sheriff is commanded that he cause to come before the king at *Westminster*, twelve free and lawful men of the body of his county, by whom the truth of the matter may be the better known, and who are neither of kin to the plaintiff or defendant, to recognize of the truth of the issue between the parties:” Venire.

which writ is made returnable before the trial; therefore the jury must unavoidably make a default. For which reason a compulsive process is now awarded against the jurors; in the *King's Bench* called a *distringas*, in the *Common Pleas* a *habeas corpora juratorum*, commanding the sheriff to distrain them by their lands and goods, or to have their bodies, that they may appear in court on the day appointed by this writ.

By virtue of this writ, the sheriff issues his precept to his bailiff, to summon the jury to be on the day, and at the place therein mentioned; which being done, the sheriff returns the writ executed to the court, with a panel annexed of the names and places of the jurors so summoned, on a piece of parchment. Sheriff, by virtue of this writ, issues his precept to his bailiff.

(a) F. N. B. 4.

(b) Finch Law, 412. 1 Leon. 303.
S 4

The writ of *venire* and *distringas*, as also the *hab. corp. jurat.* are returned thus :

Return of *ven.*
and *distringas.*

The execution of this writ appears in the panel annexed. The answer of J. B. Esq., Sheriff.

Middlesex, } The names of the jury between *John Denn,*
to wit. } plaintiff, and *Richard Fenn,* defendant, of a
plea of debt.

Hundred of O.

John Doe of B., farmer, [here insert the forty-eight jurors summoned to appear; then at the foot say,]

Summoners are, { *John Doe*
and
Richard Roe.

Issues upon each of them 40s.

A copy of the names are to be made on strong paper, to be put in a box with the additions, as in the panel, to be delivered to the marshal.

If sheriff be not
indifferent, co-
roner to return
the jury.

But if the sheriff be not an indifferent person, as if he be a party in the suit, or be related either by blood or affinity to either of the parties, he is not then trusted to return the jury; but the *venire* shall be directed to the coroners, who in this, as in many other instances, are the substitutes of the sheriff, to execute process when he is deemed an improper person. If any exception lies to the coroners, the *venire* shall be directed to two clerks in court, or two persons of the county named by the court and sworn (*c*). And these two, who are called *elisors*, shall indifferently name the jury, and their return is final.

If exception to
coroner, then
elisors.

Trial on crimi-
nal side.

With respect to trial on the *criminal side*, it may be observed, that the founders of the *English* laws have, with excellent forecast, contrived, that no man should be called to answer to the king for any capital crime unless upon the preparatory accusation of twelve or more of his fellow-subjects, who are called the *grand jury*; and that the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of *twelve* of his *equals* and *neighbours*, indifferently chosen, and superior to all suspicion.

When prisoner
has pleaded,

When a prisoner, on his arraignment, has pleaded not guilty, and upon his trial hath put himself upon the coun-

(c) Co. Lit. 158, a. 2 Rol. Abr. 671. Fortesc. de Laud. c. 25.

try, which country the jury are, the sheriff of the county must return a panel of jurors, *liberos et legales homines de vicineto*; that is, freeholders without just exception, and of the visne or neighbourhood; which is interpreted to be of the *county* where the fact is committed (*d*). If the proceedings are before the court of King's Bench, there is time allowed, between the arraignment and the trial, for a jury to be impanelled by writ of *venire facias* to the sheriff, as in civil causes; and the trial in the case of a misdemeanor is had at *nisi prius*, unless it be of such consequence as to merit a trial at bar; which is always invariably had when the prisoner is tried for any capital offence.

sheriff must return a panel of jurors.

If proceedings in K. B.

But before commissioners of oyer and terminer and gaol-delivery, the sheriff, by virtue of a general precept directed to him beforehand, *returns* to the court *a panel of forty-eight jurors, freeholders of 10 l. per annum*, to try all felons that may be called upon their trial at that session; and, therefore, it is there usual to try all felons immediately, or soon after their arraignment; but for misdemeanors, security is usually given to appear at the next assize or session to try the traverse, giving notice to the prosecutor of the same.

But before commissioners of oyer and terminer.

Misdemeanors.

The sheriff must return more than twelve for the grand jury; and generally an odd number, as seventeen, nineteen or twenty-one, are sworn, to prevent the inconvenience of an equal number of voices, on a division, to retard finding a bill, though twelve are to agree, or it will be void.

How many sheriff to return on grand inquest.

Forty-eight of the grand inquest, each to have 80 l. per annum in land, are to be summoned for *York* assizes, and forty-eight at the sessions.

7 & 8 W. 3. c. 32. s. 8.

The Act relating to Jurors.

The laws relative to the qualification, summoning and formation of juries having become numerous and complicated, the whole have been consolidated, simplified and amended, by the 6 *Geo.* 4, and the following provisions now constitute the entire body of law upon that subject. c. 50.

Every man, except as herein-after excepted, between the ages of 21 years and 60 years, residing in any county in *England*, who shall have in his own name or in trust for

Qualification of jurors in England in superior

(*d*) 2 Hal. P. C. 264.

courts, assizes, and sessions of the peace. (See 13 Ed. 1. c. 38. 27 Eliz. c. 6. 4 & 5 W. & M. c. 25. s. 15. 3 G. 2. c. 25. s. 18.)

Qualification in Wales. (See 4 & 5 W. & M. c. 25. s. 15.)

s. 1.

Exemptions from serving on juries. (See 1 W. & M. c. 18. s. 11. 19 G. 3. c. 44. 31 G. 3. c. 32. s. 8. 52 G. 3. c. 155. s. 9.

him, within the same county, 10*l.* by the year above reprises, in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents taken together, in fee simple, fee tail, or for the life of himself or some other person, or who shall have within the same county 20*l.* by the year above reprises, in lands or tenements, held by lease or leases for the absolute term of 21 years, or some longer term, or for any term of years determinable on any life or lives, or who being a householder shall be rated or assessed to the poor-rate, or to the inhabited house-duty in the county of *Middlesex*, on a value of not less than 30*l.* or in any other county on a value of not less than 20*l.*, or who shall occupy a house containing not less than 15 windows, shall be qualified and shall be liable to serve on juries, for the trial of all issues joined in any of the king's courts of record at *Westminster*, and in the superior courts, both civil and criminal, of the three counties palatine, and in all courts of assize, nisi prius, oyer and terminer, and gaol delivery, such issues being respectively triable in the county in which every man so qualified respectively shall reside; and shall also be qualified and liable to serve on grand juries in courts of sessions of the peace and on petty juries, for the trial of all issues joined in such courts of sessions of the peace, and triable in the county, riding, or division in which every man so qualified respectively shall reside; and that every man (except as excepted) being between the aforesaid ages, residing in any county in *Wales*, and being there qualified to the extent of three-fifths of any of the foregoing qualifications, shall be qualified and shall be liable to serve on juries for the trial of all issues joined in the courts of great sessions, and on grand juries in courts of sessions of the peace, and on petty juries for the trial of all issues joined in such courts of sessions of the peace, in every county of *Wales*, in which every man so qualified as last aforesaid respectively shall reside.

Provided always, That all peers; all judges of the king's courts of record at *Westminster*, and of the courts of great session in *Wales*; all clergymen in holy orders; all priests of the Roman-catholic faith who shall have duly taken and subscribed the oaths and declarations required by law; all persons who shall teach or preach in any congregation of protestant dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths,

(a) Lamb. 396.

and subscribed the declaration required by law; all serjeants and barristers at law actually practising; all members of the society of doctors of law, and advocates of the civil law, actually practising; all attornies, solicitors, and proctors duly admitted in any court of law or equity; or of ecclesiastical or admiralty jurisdiction, in which attornies, solicitors, and proctors have usually been admitted, actually practising, and having duly taken out their annual certificates; all officers of any such courts actually exercising the duties of their respective offices; all coroners, gaolers, and keepers of houses of correction; all members and licentiates of the Royal College of Physicians in London actually practising; all surgeons being members of one of the royal colleges of surgeons in *London, Edinburgh, or Dublin*, and actually practising; all apothecaries certificated by the court of examiners of the apothecaries company, and actually practising; all officers in His Majesty's navy or army on full-pay: all pilots licensed by the Trinity-house of *Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne*, and all masters of vessels in the buoy and light service, employed by either of those corporations, and all pilots licensed by the Lord Warden of the Cinque Ports, or under any act of parliament or charter for the regulation of pilots in any other port; all the household servants of His Majesty, his heirs and successors; all officers of customs and excise; all sheriff's officers, high constables, and parish clerks; shall be and are hereby absolutely freed and exempted from being returned, and from serving upon any juries or inquests whatsoever, and shall not be inserted in the lists to be prepared by virtue of this act as herein-after mentioned: provided also, that all persons exempt from serving upon juries in any of the courts aforesaid, by virtue of any prescription, charter, grant, or writ, shall continue to have and enjoy such exemption in as ample a manner as before the passing of this act, and shall not be inserted in the lists hereinafter mentioned.

(See 5 H. 8. c. 6.
18 G. 2. c. 15.
s. 10.)
(See 6 & 7
W. & M. c. 4.)
55 G. 3. c. 194.

Provided also, that no man, not being a natural born subject of the king, is or shall be qualified to serve on juries or inquests, except only in the cases hereinafter expressly provided for; and no man who hath been or shall be attainted of any treason or felony, or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry or excommunication, is or shall be qualified to serve on juries or inquests in any court, or on any occasion whatsoever.

s. 2.

Aliens disqualified except on juries *de medietate*.

Convicts or outlaws, &c. disqualified.

That the clerk of the peace in every county, riding, and division in *England* and *Wales*, shall, within the first week

s. 3.

Clerk of the peace to issue warrants to the

high constables in July. (See 3 & 4 Anne, c. 18. s. 5. 3 G. 2. c. 25.)

of *July* in every year, issue and deliver his warrant (in the form in the schedule hereunto annexed, or as near thereto as may be) to the high constables of each hundred, lathe, wapentake or other like district, by which he shall command them to issue forth their precepts to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships within their respective constablewicks, requiring them to prepare and make out, before the first day *September* then next ensuing, a true list of all men, residing within their respective parishes and townships, qualified and liable to serve on juries according to this act as aforesaid, and also to perform and comply with all other the requisitions in the said precepts contained.

s. 4.

Clerk of the peace to annex printed forms of precepts and returns to his warrants.

That every such clerk of the peace shall cause a sufficient number of warrants, precepts and returns to be printed, according to the several forms set forth in the schedule hereunto annexed, at the expense of the county, riding or division, and shall annex to every warrant a competent number of precepts and returns for the use of the respective persons by whom such precepts are to be issued and such returns to be made.

s. 5.

High constables to issue precepts to churchwardens and overseers within their constablewicks, commanding them to make out the jury lists.

That within 14 days after the receipt of such warrant of the clerk of the peace, every high constable shall issue and deliver his precept (in the form set forth in the schedule annexed, or as near thereto as may be), together with a competent number of the printed forms of returns, to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships within his constablewick, requiring them by such precept to prepare and make out a true list of all men residing within their respective parishes and townships, qualified and liable to serve as jurors as aforesaid, and to perform and comply with all the requisitions in the said precept contained: provided always, that where in any hundred, lathe, wapentake, or other like district, there shall be more than one high constable, in such case the clerk of the peace shall issue and deliver his warrant, together with a competent number of the precepts and returns as aforesaid, to every one of such high constables, each of whom shall be individually liable for the due performance of the several matters commanded in such warrant throughout the whole of such hundred, &c. or other like district, and shall for the non-performance thereof be subject to all and every the penalties by this act imposed upon any high constable; provided also, that where in any parish there shall be no overseers of the poor, other than the churchwardens, such churchwardens shall be deemed

Where there are several high constables, each to be responsible for the duties required by this Act throughout the whole hundred.

and taken to be the churchwardens and overseers of the poor of such parish, within the meaning of this act, to all intents and purposes; provided also, that where any parish or township shall extend into more than one hundred, &c. either in the same or different counties, such parish or township shall be deemed and taken, for all the purposes of this act, to be within that hundred, &c. in which the principal church of such parish or township shall be situate.

That it shall be lawful for the justices of the peace of any division in *England* or *Wales*, at a special petty sessions to be holden for that purpose, before the 1st *July* in any year, to make an order for annexing any extra-parochial place, whenever they shall think it expedient, to any parish or township adjoining thereto, for the purposes of this act, and a copy of such order shall, within five days from the making thereof, be served upon the churchwardens and overseers of such adjoining parish, or upon the overseers of such adjoining township, and such extra-parochial place shall from thence continually be deemed and taken, for all the purposes of this act, to be within and to form an integral part of such parish or township; and the churchwardens and overseers of such parish, and the overseers of such township, shall be and they are hereby respectively authorized and required to make out, according to this act, a true list of all men qualified and liable to serve on juries as aforesaid, residing as well in their own respective parish or township as in the extra-parochial place thereto annexed, and shall from time to time perform and execute within such extra-parochial place for the purposes of this act, but for no other purpose, all and every the same acts, duties, powers, and authorities, as in their own respective parish or township, and shall be as fully liable to the same penalties for the non performance thereof within such extra-parochial place, as if they had in every instance been mentioned in this act with reference to such extra-parochial place.

That the churchwardens and overseers of every parish, and the overseers of every township, within the meaning of this act, shall forthwith, after the receipt of such precept from the high constable, prepare and make out in alphabetical order a true list of every man residing within their respective parishes or townships, who shall be qualified and liable to serve on juries as aforesaid, with the christian and surname written at full length, and with the true place of abode, the title, quality, calling or business, and the nature of the qualification of every such man, in the proper columns of the form of return set forth in the schedule hereunto annexed.

Parishes, &c. extending into more than one hundred, to be treated as entirely within the hundred where the parish church is.
s. 6.

Justices of division may order any extra-parochial place to be annexed to any adjoining parish or township, for the purposes of this Act.

s. 7.

Churchwardens and overseers to make out lists of persons qualified to serve on juries, with their residences, &c.
(See 3 & 4 Anne, c. 18.
s. 5.)

s. 8.

Lists to be fixed on church doors, and also kept by churchwardens for inspection, 3 G. 2. c. 25.

That the churchwardens and overseers of each parish, and the overseers of each township, having made out according to this act a list of every man qualified and liable to serve on juries as aforesaid, shall, on the three first *Sundays* in the month of *September*, fix a true copy of such list upon the principal door of every church, chapel and other public place of religious worship within their respective parishes or townships, having first subjoined to every such copy a notice, stating, that all objections to the list will be heard by the justices of the peace at a time and place to be mentioned in such notice, and having also signed their names at the foot of such copy, and shall likewise keep the original list, or a true copy thereof, to be perused by any of the inhabitants of their respective parishes or townships, at any reasonable time during the three first weeks of the month of *September*, without any fee or reward, to the end that notice may be given of men qualified who are omitted, or of men inserted who ought to be omitted out of such list; and the churchwardens and overseers of each parish, and the overseers of each township, are hereby authorized to cause a sufficient number of copies of such lists, for the purposes aforesaid, to be printed at the expense of their respective parishes or townships.

s. 9.

Petty sessions to be held in the last week of September.

That the justices of the peace in every division in *England* and *Wales* shall hold a special petty sessions for the purposes herein mentioned, within the last seven days of *September* in every year, on some day, and at some place, of which notice shall be given by their clerk, before the 20th day of *August* next preceding, to the high constable and to the churchwardens and overseers of every parish, and to the overseers of every township, within such division; and the churchwardens and overseers of each parish, and the overseers of each township, shall then and there produce the list of men qualified and liable to serve on juries as aforesaid, within their respective parishes or townships, by them prepared and made out as herein-before directed, and shall answer upon oath such questions touching the same as shall be put to them, or any of them, by the justices then present; and if any man, not qualified and liable to serve on juries as aforesaid is inserted in any such list, it shall be lawful for the said justices, upon satisfaction from the oath of the party complaining, or other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries, to strike his name out of such list, and also to strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness or other permanent infirmity of body, from serving on juries; and it shall also be lawful for such justices to insert in such

Lists to be there produced, considered, reformed, and allowed.
3 G. 2. c. 25.

list the name of any man omitted therein, and likewise to reform any errors or omissions which shall appear to them to have been committed in respect to the name, place of abode, title, quality, calling, business, or other nature of the qualification of any man included in any such list: Provided always, that no man's name, if omitted, shall be inserted in such list, nor shall any error or omission in the description of any man in such list be reformed by the said justices, unless upon the application of such men respectively, or unless such men respectively shall have had notice that an application for such purpose would be made to the justices at such petty sessions, or unless the said justices at such sessions, or any two of them, shall cause notice to be given to such men respectively, requiring them to show cause, at some adjournment of such petty sessions to be holden within four days thereafter, why their names should not be inserted in such list, or why any error or omission in the description of such men in such list should not be reformed; and when every such list shall be duly corrected at such sessions, or at such adjournment thereof, it shall be allowed by the justices present, or two of them, at such sessions or such adjournment, who shall sign the same, with their allowance thereof; and the high constable shall receive every list so allowed, and deliver the same to the court of quarter sessions next holden for the county, riding, or division, on the first day of its sitting, at the same time attesting on oath his receipt of every such list from the petty sessions, and that no alteration hath been made therein since his receipt thereof.

That the respective churchwardens and overseers of every parish, and the overseers of every township, shall, for their assistance in completing the lists, pursuant to the intent of this act (upon request made by them or any of them at any reasonable time between the 1st day of *July* and the 1st day of *October* in every year, to any collector or assessor of taxes, or to any other officer having the custody of any duplicate or tax assessment for such parish or township), have free liberty to inspect any such duplicate or assessment, and take from thence the names of such men qualified to serve on juries, dwelling within their respective parishes or townships, as may appear to them or any of them to be necessary or useful; and every court of petty sessions and justice of the peace shall, upon the like request to any collector or assessor of taxes, or any other officer having the custody of any duplicate or tax assessment, or to any churchwarden or churchwardens, or overseer or overseers, having the custody of any poor rate within their respective divisions, have the like free liberty to inspect and make extracts from any such duplicate, tax assessment, or

Petty sessions not to alter any list without notice to the party to be affected by the alterations.

Power of adjournment.

Lists, after allowance by petty sessions, to be delivered to high constable, and by him to the next quarter sessions. (See 3 G. 2. c. 25. s. 7. s. 10.

Tax assessments and poor rates to be inspected.

(See 3 G. 2. c. 25. s. 1.)

s. 11.

Lists to be kept by clerk of peace, and copied into a book, to be delivered to sheriff. (See 7 & 8 W. 3. c. 32. s. 4. 3 G. 2. c. 25. s. 2.)

Book to be called "The Jurors Book." Sheriff to deliver it to his successor.

To be used for one year from 1st January.

s. 12.

Form of *venire facias*; (see 4 Anne, c. 16. s. 6 & 7. 24 G. 2. c. 18.)

and of precept for jurors at gaol deliveries and sessions of the peace.

s. 13.

Juries to be returned from jurors book, by sheriff, and by coroners and elisors.

poor rate, for the purpose of assisting them in the reformation and completion of the jury lists within their respective divisions.

That the clerk of the peace shall keep the lists, so returned by the high constable to the court of quarter sessions, among the records of the sessions, arranged with every hundred in alphabetical order, and every parish or township within such hundred likewise in alphabetical order, and shall cause the same to be fairly and truly copied, in the same order, in a book to be by him provided for that purpose, at the expense of the county, riding, or division, with proper columns for making the register hereinafter directed, and shall deliver the same book to the sheriff of the county or his under-sheriff, within six weeks next after the close of such sessions, which book shall be called "The Jurors Book for the year _____" (inserting the calendar year for which such book is to be in use); and that every sheriff on quitting his office shall deliver the same to the succeeding sheriff; and that every juror's book so prepared, shall be brought into use on the 1st day of *January* after it shall be so delivered by the clerk of the peace to the sheriff or his under-sheriff, and shall be used for one year then next following.

That every writ of *venire facias juratores* for the trial of any issue whatsoever, whether civil or criminal, or on any penal statute, in any of the courts in *England* or *Wales* hereinbefore mentioned, shall direct the sheriff to return twelve good and lawful men of the body of his county, qualified according to law, and the rest of the writ shall proceed in the accustomed form; and that every precept to be issued for the return of jurors before courts of oyer and terminer, gaol delivery, the superior criminal courts of the three counties palatine, and courts of sessions of the peace in *England*, and before the courts of great sessions and sessions of the peace in *Wales*, shall in like manner direct the sheriff to return a competent number of good and lawful men of the body of his county, qualified according to law, and shall not require the same to be returned from any hundred or hundreds, or from any particular venue within the county, and that the want of hundredors shall be no cause of challenge; any law, custom or usage to the contrary notwithstanding.

That every sheriff, upon the receipt of every such writ of *venire facias* and precept for the return of jurors, shall return the names of men contained in the jurors book for the then current year, and no others; and that where process for returning a jury for the trial of any of the issues aforesaid shall be directed to any coroner, elisor, or other minister,

he shall have free access to the jurors book for the current year, and shall in like manner return the names of men contained therein, and no others; provided always, that if there shall be no jurors book in existence for the current year, it shall be lawful to return jurors from the jurors book for the year preceding.

s. 14.

Sheriff, &c. on return of writs of *venire facias*, to annex a panel of jurors, &c. (See 3 G. 2. c. 25. s. 8.)

That every sheriff or other minister to whom the return of juries for the trial of issues before any court of assize or *nisi prius* in any county of England, except the counties palatine, may belong, shall, upon his return of every writ of *venire facias* (unless in causes intended to be tried at bar, or in cases where a special jury shall be struck by order or rule of court), annex a panel to the said writ, containing the names, alphabetically arranged, together with the places of abode and additions, of a competent number of jurors named in the jurors book, and that the names of the same jurors shall be inserted in the panel annexed to every *venire facias* for the trial of all issues at the same assizes or sessions of *nisi prius* in each respective county, which number of jurors shall not in any county be less than 48 nor more than 72, unless by the direction of the judges appointed to hold the assizes or sessions of *nisi prius* in the same county, or one of them, who are and is hereby empowered, by order under their or his hands or hand, to direct a greater or lesser number, and then such number as shall be so directed shall be the number to be returned; and that in the writ of *habeas corpora juratorum* or *distringas*, subsequent to such writ of *venire facias*, it shall not be requisite to insert the names of all the jurors contained in such panel, but it shall be sufficient to insert in the mandatory part of such writs respectively, "the bodies of "the several persons in the panel to this writ annexed "named," or words of the like import; and to annex to such writs respectively, panels containing the same names as were returned in the panel to such *venire facias*, with their places of abode and additions; and that for making the returns and panels aforesaid, and annexing the same to the respective writs, the ancient legal fee, and no other, shall be taken; and that the men named in such panels, and no others, shall be summoned to serve on juries at the then next court of assizes or sessions of *nisi prius* for the respective counties named in such writs.

s. 15.

That if any plaintiff or demandant in any cause which shall be at issue in any of His Majesty's courts of record at Westminster, or any defendant in any action of *quare impedit* or replevin which shall be so at issue, shall sue out any writ of *venire facias*, upon which any writ of *habeas corpora* or *distringas* with a *nisi prius* shall issue, in order to the

If plaintiff sue forth a *venire*, &c. in order to trial, and proceed not, he may afterwards sue forth ano-

ther *venire*, &c. and try at any subsequent assizes. (See 7 & 8 W. 3. c. 32. s. 1.)

Defendant may do the same.

s. 16.

Returns of jurors in the counties palatine.

(See 3 G. 2. c. 25. s. 10.)

trial of the said issue at the assizes or sessions of *nisi prius*, and shall not proceed to trial at the first assizes or sessions of *nisi prius* after the *teste* of such writ of *habeas corpora* or *distringas*, then and in every such case (except when a view by jurors shall be directed, as hereinafter mentioned) such plaintiff, demandant, or defendant, whensoever he shall think fit to try the said issue at any other assizes or sessions of *nisi prius*, shall sue forth a new writ of *venire facias*, commanding the sheriff to return anew twelve good and lawful men of the body of his county, qualified according to law, and the rest of the writ shall proceed in the accustomed manner; which writ being duly returned, a writ of *habeas corpora* or *distringas* with a *nisi prius* shall issue thereupon (for which the same fees shall be paid as in the case of the *pluries habeas corpora* or *distringas* with a *nisi prius*), upon which such plaintiff, demandant, or defendant shall and may proceed to trial as lawfully and effectually to all intents and purposes as if no former writ of *venire facias* had been prosecuted in that cause, and so *toties quoties*, as the case shall require; and if any defendant or tenant in in any action depending in any of the said courts shall be minded to bring to trial any issue joined against him, where by the practice of the court he may do the same by proviso, he shall or may, of the issuable term next preceding such intended trial to be had at the next assizes or sessions of *nisi prius*, sue out a new *venire facias* to the sheriff in the form aforesaid by proviso, and prosecute the same by writ of *habeas corpora* or *distringas* with a *nisi prius*, as lawfully and effectually to all intents and purposes as if no former writ of *venire facias* had been sued out or returned in that cause, and so *toties quoties*, as the matter shall require.

That every sheriff or other minister to whom the return of juries for the trial of causes in the superior courts of the said counties palatine may belong, shall, ten days at least before the said courts shall respectively be held, summon a competent number of men, named in the jurors book, to serve on juries in the said courts, so as such number be not less than 48 nor more than 72, without the direction of the judge or judges of the courts for such counties palatine respectively; and the sheriff or other minister who shall summon such jurors shall return a list, containing the names, alphabetically arranged, and the places of abode and additions, of the jurors so summoned, on the first day of the court to be held for the said counties palatine respectively; and the jurors so summoned, or a competent number of them, as the judge or judges of such courts respectively shall direct, and no others, (unless in cases where a special jury shall be struck), shall be named in every

panel to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distringas*, which shall be issued out and returnable for the trial of causes in such courts respectively.

s. 17.

Returns of
jurors in Wales.

That every sheriff or other minister to whom the return of juries for the trial of causes in the court of great sessions in any county of *Wales* may belong, shall, at least ten days before every great sessions, summon a competent number of men named in the jurors book, so as such number be not less than 48 or more than 72, without the direction of the judge or judges of the great sessions for such county, who is and are hereby empowered, if he or they shall see cause, by rule of court, or by an order of any judge thereof, to be made in vacation, if necessary, to direct a greater or lesser number to be summoned; and that the sheriff or other minister who shall summon such jurors shall return a list, containing the names, alphabetically arranged, and the places of abode and additions, of the jurors so summoned, at the first court of the second day of every great sessions; and that the jurors so summoned, or a competent number of them, as the judge or judges of such great sessions shall direct, and no others (unless in cases where a special jury shall be struck), shall be named in every panel to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distringas*, which shall be issued out and returnable for the trial of causes at such great sessions.

(See 3 G. 2.
c. 25. s. 9.)

s. 18.

That the sheriff or other minister to whom the return of jurors for the trial of causes in any county in *England*, (except the counties palatine) may belong, shall cause to be made out an alphabetical list of the names of all the jurors contained in the panels to the several writs of *venire facias* annexed as aforesaid, with their respective places of abode and additions; and the sheriff or other minister to whom the return of jurors for the trial of causes in any county palatine, or in any county in *Wales*, may belong, shall cause to be made out in like manner a list of all the jurors so summoned in such respective counties as aforesaid; and every such sheriff or other minister shall keep such list in the office of his under-sheriff or deputy for seven days at least before the sitting of the next court of assize or *nisi prius*, or the next court to be holden for any county palatine, or the next court of great sessions in any county in *Wales*; and the parties in all causes to be tried at any such court of assize or *nisi prius*, or court of any county palatine or great sessions, and their respective attornies, shall, on demand, have full liberty to inspect such list, without any fee or reward to be paid for inspection.

Copy of the
panel to be kept
in the sheriff's
office, for the
inspection of the
parties and their
attornies.(See 42 Ed. 3.
c. 11. and
6 H. 6. c. 2.)

s. 19.

Juries in all criminal courts to be returned as before.

(3 H. 8. c. 12.)

s. 20.

Copy of the panel to be delivered to parties indicted for high treason.

(See 7 Anne, c. 21. s. 7.)

Exceptions.
39 & 40 G. 3.
c. 93.

6 G. 3. c. 53.
s. 3.

s. 21.

Provided that the court of King's Bench, and all courts of oyer and terminer, gaol delivery, the superior criminal courts of the three counties palatine, and courts of sessions and sessions of the peace in *England*, and all courts of great sessions and sessions of the peace in *Wales*, shall respectively have and exercise the same power and authority as they have heretofore had and exercised in issuing any writ or precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before any of such courts respectively, or for the amending or enlarging the panel of jurors returned for the trial of any such issue; and the return to every such writ, precept, award or order, shall be made in the manner heretofore used and accustomed in such courts respectively, save and except that the jurors shall be returned from the body of the county, and not from any hundred or hundreds, or from any particular venue within the county, and shall be qualified according to this act.

That when any person is indicted for high treason or misprision of treason, in any court other than the court of King's Bench, a list of the petit jury, mentioning the names, profession, and place of abode of the jurors, shall be given at the same time that the copy of the indictment is delivered to the party indicted, which shall be ten days before the arraignment, and in the presence of two or more creditable witnesses; and when any person is indicted for high treason or misprision of treason in the court of King's Bench, a copy of the indictment shall be delivered within the time and in the manner aforesaid; but the list of the petit jury, made out as aforesaid, may be delivered to the party indicted at any time after the arraignment, so as the same be delivered ten days before the day of trial: provided always, that nothing herein contained shall any ways extend to any indictment for high treason in compassing and imagining the death of the king, or for misprision of such treason, where the overt act or overt acts of such treason alledged in the indictment shall be assassination or killing of the king, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered, or his person may suffer bodily harm; or to any indictment of high treason for counterfeiting His Majesty's coin, the great seal or privy seal, his sign manual or privy signet; or to any indictment of high treason, or to any proceedings thereupon, against any offender or offenders who by any act or acts now in force is and are to be indicted, arraigned, tried, and convicted by such like evidence, and in such manner as is used and allowed against offenders for counterfeiting His Majesty's coin.

That in any county in which the justices of assize in *England*, or the justices of the superior courts of the said counties palatine, or the judges of the great sessions in any county of *Wales*, shall think fit so to direct, the sheriff or other minister to whom the return of the *venire facias juratores*, or other process for the trial of causes at *nisi prius*, doth belong, shall summon and impanel such number of jurors, not exceeding 144, as such judges or justices respectively shall think fit to direct, to serve indiscriminately on the criminal and civil side; and that where such judges or justices respectively shall so direct, the sheriff or other minister shall divide such jurors equally into two sets, the first of which sets shall attend and serve for so many days at the beginning of each assize or great sessions, as such judges or justices respectively shall, within a reasonable time before the commencement of such assize or great sessions, respectively think fit to direct, and the other of which sets shall attend and serve for the residue of such assize or great sessions: provided always, that such sheriff or other minister shall, in the summons to the jurors in each of such sets, specify whether the juror named therein is in the first or second set, and at what time the attendance of such juror will be required; and the sheriff or other minister to whom the return of the *venire facias juratores*, or other process for the trial of causes at *nisi prius*, doth belong, shall, upon his return of every such writ or process, annex thereto a panel containing the names, alphabetically arranged, together with the additions and places of abode, of the jurors in each of such sets; and during the attendance and service of the first of such sets, the jury on the civil side shall be drawn from the names of the persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set: provided always, that in any case wherein an order for a view shall have been obtained as hereinafter mentioned, it shall be lawful for the judge before whom such case is to be tried, and he is hereby required, on the application of the party obtaining such order, to appoint such case to be tried during the attendance and service of that set of jurors in which the viewers, or the major part of them, are included.

That where in any case either civil or criminal, or on any penal statute, depending in any of the said courts of record at *Westminster*, or in the counties palatine, or great sessions in *Wales*, it shall appear to any of the respective courts, or to any judge thereof in vacation, that it will be proper and necessary that some of the jurors who are to try the issues in such case should have the view of the

Judge of assize, &c. to direct the same panel for the criminal and civil sides, and two sets of jurors to be summoned, one to attend at the beginning of each assizes, and the other to attend the residue thereof, to serve indiscriminately on the criminal and civil side.

(See 1 & 2 G. 4. c. 46.)
Summons to be made out either for the first or second set.

In case of views, the judge to appoint trial during the attendance of the viewers.

s. 22.

Where jurors are to view lands, &c. court may order special writs of *venire facias*, *distringas*, or *habeas corpora*.

(See 4 Anne,
c. 16. s. 8.
3 G. 2. c. 25.
s. 14.)

place in question, in order to their better understanding the evidence that may be given upon the trial of such issues, in every such case such court, or any judge thereof in vacation, may order a rule to be drawn up containing the usual terms, and also requiring, if such court or judge shall so think fit, the party applying for the view to deposit in the hands of the under-sheriff a sum of money to be named in the rule for the payment of the expenses of the view, and commanding special writs of *venire facias*, *distringas* or *habeas corpora*, to issue, by which the sheriff or other minister to whom the said writs shall be directed shall be commanded to have six or more of the jurors named in such writs, or in the panels thereto annexed, (who shall be mutually consented to by the parties, or if they cannot agree, shall be nominated by the sheriff or such other minister as aforesaid,) at the place in question, some convenient time before the trial, who then and there shall have the place in question shown to them by two persons in the said writs named, to be appointed by the court or judge; and the said sheriff or other minister who is to execute any such writ shall, by a special return upon the same, certify that the view hath been had according to the command of the same, and shall specify the names of the viewers.

s. 23.

Viewers in case of appearance to be sworn upon the jury first.
(See 3 G. 2. c. 25. s. 14.)
s. 21.

Jurors to be summoned ten days before the day of attendance,
(See 7 & 8 W. 3. c. 32. s. 5 & 11.) and for special jurors three days.

Time for summoning jurors for London, &c. as heretofore.

That where a view shall be allowed in any case, those men who shall have had the view, or such of them as shall appear upon the jury to try the issue, shall be first sworn, and so many only shall be added to the viewers who shall appear as shall, after all defaulters and challenges allowed, make up a full jury of twelve.

That the summons of every man to serve on juries, not being special juries, in any one of the courts aforesaid, shall be made by the proper officer ten days at the least before the day on which the juror is to attend, by showing to the man to be summoned, or in case he shall be absent from the usual place of his abode, by leaving with some person there inhabiting, a note in writing, under the hand of the sheriff or other proper officer, containing the substance of such summons; and the summons of every man to serve on special juries in any of the courts aforesaid shall be made by the like persons and in the like manner as aforesaid, three days at the least before the day on which the special juror is to attend: provided always, that this act shall not require any longer time for summoning any jurors in the city of London or county of Middlesex than has been heretofore by law required, nor shall give any longer time for the return of any writ of *venire facias*, *habeas corpora* or *distringas*, than has been heretofore by

law required ; but that where there shall not be ten days between the awarding of such writ and the return thereof, every juror may be summoned, attached or distrained to appear at the day and time therein mentioned, as he might heretofore have been. s. 25.

That the name of each man who shall be summoned and impannelled in any court of assize or *nisi prius*, or for the trial of issues in the civil courts of the counties palatine or great sessions, with the place of his abode and addition, shall be written on a distinct piece of parchment or card, such pieces of parchment or card being all as nearly as may be of equal size, and shall be delivered unto the associate or prothonotary of such court by the under-sheriff of the county, or the secondary of the city of *London*, and shall, by direction and care of such associate or prothonotary, be put together in a box to be provided for that purpose, and when any issue shall be brought on to be tried, such associate or prothonotary shall in open court draw out 12 of the said parchments or cards one after another, and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number, until 12 men be drawn, who shall appear, and after all just causes of challenge allowed, shall remain as fair and indifferent ; and the said 12 men so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the issue, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury shall have given in their verdict, and the same shall be recorded, or until such jury shall, by consent of the parties or by leave of the court, be discharged, and then the same names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried : provided always, that if any issue shall be brought on to be tried in any of the said courts before the jury in any other issue shall have brought in their verdict or been discharged, it shall be lawful for the court to order 12 of the residue of the said parchments or cards, not containing the names of any of the jurors who shall not have so brought in their verdict or been discharged, to be drawn in such manner as is aforesaid, for the trial of the issue which shall be so brought on to be tried : provided also, that where no objection shall be made on behalf of the king or any other party, it shall be lawful for the court to try any issue with the same jury that shall have previously tried or been drawn to try any other issue, without their names being returned to the box and re-drawn, or to order the name or names of

Names of jurors to be delivered to the associate, and balloted for juries in civil courts.

(See 3 G.2. c.25. s. 11 & 12.)

Where the jury have not brought in their verdict, twelve others to be drawn.

The same jury, if not objected to, may try several issues in succession, without being re-drawn.

s. 26.

an man or men on such jury, whom both parties may consent to withdraw, or who may be justly challenged or excused by the court, to be set aside, and another name or other names to be drawn from the box, and to try the issue with the residue of such original jury, and with such man or men whose name or names shall be so drawn, and who shall appear and be approved as indifferent, and so *toties quoties* as long as any issue remains to be tried.

Want of qualification in common jurors to be cause of challenge. (See 4 & 5 W. & M. c. 24. s. 15.)

Not to extend to special jurors. s. 27.

Where challenges not admitted. (See 24 G. 2. c. 18. s. 4.) s. 28.

The king to challenge only for cause. 33 Ed. 1. st. 4.

Prisoner allowed 20 peremptory challenges only in felony. (See 22 H. 8. c. 14. 1 & 2 P. & M. c. 10. s. 29.)

Court to have the power of ordering special juries to be struck before the proper officer.

That if any man shall be returned as a juror for the trial of any issue in any of the courts herein-before mentioned, who shall not be qualified according to this act, the want of such qualification shall be good cause of challenge, and he shall be discharged upon such challenge, if the court shall be satisfied of the fact; and that if any man returned as a juror for the trial of any such issue shall be qualified in other respects according to this act, the want of freehold shall not on such trial in any case, civil or criminal, be accepted as good cause of challenge, either by the crown or by the party, nor as cause for discharging the man so returned upon his own application; any law, custom or usage to the contrary notwithstanding; provided that nothing herein contained shall extend in anywise to any special juror.

That no challenge shall be taken to any panel of jurors for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge; any law, custom or usage to the contrary notwithstanding.

That in all inquests to be taken before any of the courts hereinbefore mentioned, wherein the king is a party, howsoever it be, notwithstanding it be alleged by them to sue for the king that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court; and it shall be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the court; and that no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of 20.

That it is and shall be lawful for His Majesty's courts of King's Bench, Common Pleas and Exchequer at *Westminster* respectively, and for the judges of the said courts of the three counties palatine, and of the courts of great sessions in *Wales*, upon motion made on behalf of the king, or upon

the motion of any prosecutor, relator, plaintiff or 'demandant, or of any defendant or tenant, in any case whatsoever, whether civil or criminal, or on any penal statute, excepting only indictments for treason or felony, depending in any of the said courts, and the said courts and judges respectively are hereby authorized, in any of the cases before mentioned, to order and appoint a special jury to be struck before the proper officer of each respective court, for the trial of any issue joined in any of the said cases, and triable by a jury, in such manner as the said courts respectively have usually ordered the same; and every jury so struck shall be the jury returned for the trial of such issue.

That every man who shall be described in the jurors book for any county in *England* or *Wales*, or for the county of the city of *London*, as an esquire or person of higher degree, or as a banker or merchant, shall be qualified and liable to serve on special juries in every such county in *England* and *Wales*, and in *London* respectively; and the sheriff of every county in *England* and *Wales*, or his under-sheriff, and the sheriffs of *London* or their secondary, shall, within ten days after the delivery of the jurors book for the current year to either of them, take from such book the names of all men who shall be described therein as esquires or persons of higher degree, or as bankers or merchants, and shall respectively cause the names of all such men to be fairly and truly copied out in alphabetical order, together with their respective places of abode and additions, in a separate list to be subjoined to the jurors book, which list shall be called "the special jurors list," and shall prefix to every name in such list its proper number, beginning the numbers from the first name, and continuing them in a regular arithmetical series down to the last name, and shall cause the said several numbers to be written upon distinct pieces of parchment or card, being all as nearly as may be of equal size, and after all the said numbers shall have been so written, shall put the same together in a separate drawer or box, and shall therein keep safe the same, to be used for the purpose hereinafter mentioned.

That whenever any of the courts or judges above mentioned shall order a special jury to be struck before the proper officer of such court, such officer shall appoint a time and place for the nomination of such special jury; and copy of the rule of court, and of such officer's appointment, shall be served on the under-sheriff of the county in *England* or *Wales* in which the trial is to be had, or on the secondary of the city of *London*, if the trial is to be had

(See 3 G. 2. c. 25. s. 15. and 6 G. 2. c. 37. as to counties palatine; and 13 G. 3. c. 51. as to Wales.) s. 30.

Qualifications of special jurors in English and Welsh counties, and London; sheriff to extract from jurors book the names of all men qualified; and write them in a separate list, prefix numbers to all the names in such list; and write all the numbers on distinct cards, and put them in a box for safe custody.

s. 31.

Officer of court to appoint the time and place for nominating the special jury.

Municipal Act See 5 & 6 Wm 4th Chap 76 Sec 123
as to the liability of Persons in Boroughs
serving on Juries -

Under-sheriff or agent to attend the officer with the special jurors list, and all the numbers; officer to put all the numbers in a box, and to draw out 48, and check them with the numbers and names in the list;

there, and also on all the parties who have usually been served with the same respectively in the accustomed manner; and the said officer, at the time and place appointed, being attended by such under-sheriff or secondary, or his agent, who are hereby respectively required to bring with them the jurors book and such special jurors list, and all the numbers so written on distinct pieces of parchment or card as aforesaid, shall, in the presence of all the parties in any of the cases aforesaid, and of their attorneys (if they respectively choose to attend, or if the said parties or their attorneys, all or any of them, do not attend, then in their absence,) put all the said numbers into a box, to be by him provided for that purpose, and after having shaken them together shall draw out of the said box 48 of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the special jurors list, and read aloud the name designated by such number; and if at the time of so reading any name, either party, or his attorney, shall object that the man whose name shall have been so referred to is in any manner incapacitated from serving on the said jury, and shall also then and there prove the same to the satisfaction of the said officer, such name shall be set aside, and the said officer shall instead thereof draw out of the said box another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall in every such case be resorted to, according to the mode of proceeding hereinbefore described, for the purpose of supplying names in the places of those set aside, until the whole number of 48 names not liable to be set aside shall be completed; and if in any case it shall so happen that the whole number of 48 names cannot be obtained from the special jurors list, in such case the said officer shall fairly and indifferently take, according to the mode of nomination heretofore pursued in nominating special juries, such a number of names from the general jurors book, in addition to those already taken from the special jurors list, as shall be required to make up the full number of 48 names, all and every of which 48 names shall in such case be equally deemed and taken to be those of special jurors; and the said officer shall afterwards make out for each party a list of the 48 names, together with their respective places of abode and additions, and after having made out such list, shall return all the numbers so drawn out, together with all the numbers remaining undrawn, to such under-sheriff or secondary,

and to deliver a list of the 48 names to each party, to be reduced as heretofore.

or his agent, to be by such under-sheriff or secondary safely and securely kept for future use; and all the subsequent proceedings for reducing the said list, and all other matters whatsoever relating to special juries, shall remain and continue in force as heretofore, except where the same or any part thereof is expressly altered by this act; and all the fees heretofore payable on the striking of special juries shall continue to be paid in the accustomed manner.

Provided that nothing herein contained shall be construed to prevent the parties in any cause, or their attorneys, from consenting to have a special jury nominated according to the mode used and accustomed before the passing of this Act, and upon a consent to that effect, signed by each party or his attorney, being communicated to the proper officer, he is hereby authorized and required to nominate a special jury for the trial of every such cause, according to the mode used and accustomed before the passing of this act: provided also, that nothing herein contained shall be construed to prevent the same special jury, however nominated, from trying any number of causes, so as the parties in every such cause, or their attorneys, shall have signified their assent in writing to the nomination of such special jury for the trial of their respective causes: provided always, that it shall be lawful for the court, if it shall so think fit, upon the application of any man who shall have served upon one or more special juries at any assizes or sessions of *nisi prius*, to discharge such man from serving upon any other special jury during the same assizes or sessions of *nisi prius*.

That the person or party who shall apply for a special jury shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury; unless the judge before whom the cause is tried shall, immediately after the verdict, certify under his hand upon the back of the record, that the same was a proper cause to be tried by a special jury.

That no juror who shall serve upon any special jury shall be allowed or take for serving on any such jury more than such sum of money as the judge who tries the issue shall think just and reasonable, and which shall not exceed the sum of 1*l.* 1*s.*, except in causes wherein a view is directed, and shall have been had by such juror.

Provided, that where any special jury shall be ordered, by any rule in any of the courts aforesaid, to be struck

The parties, by consent, to have a special jury struck according to the ancient mode.

The same special jury, by consent, to try any number of causes.

The court may discharge any man who has served as a special juror once during the same assizes.

s. 33.

Costs of special jury. (See 24 G. 2. c. 18.)

s. 34.

Fees to special jurors. (See 24 G. 2. c. 18.)

s. 35.

Mode of striking special juries in any county of a

city or town
(except London)
to remain as
heretofore. (See
3 G. 2. c. 25.
s. 17.
s. 36.

by the proper officer of such court, in any cause arising in any county of a city or town, except the city of *London*, the sheriff or sheriffs thereof, or the under-sheriff respectively, shall be commanded by such rule to bring or cause to be brought, before the proper officer of such court, the books or lists of persons qualified to serve on juries within the same county of a city or town: and in every such case the jury shall be taken and struck out of such books or lists respectively, in the manner heretofore used and accustomed; any thing in this Act to the contrary notwithstanding.

Tales de circumstantibus. (See
34 & 35 H. 8.
c. 26. s. 103,
as to Wales.
35 H. 8. c. 6.
4 & 5 P. & M. c. 7.
5 Eliz. c. 25.
14 Eliz. c. 9.
7 & 8 W. 3.
c. 32.)
s. 37.

That where a full jury shall not appear before any court of assize or *nisi prius*, or before any of the superior civil courts of the three counties palatine, or before any court of great sessions, or where, after appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, every such court, upon request made for the king by any one thereto authorised or assigned by the court, or on request made by the parties, plaintiff or demandant, defendant or tenant, or their respective attornies, in any action or suit, whether popular or private, shall command the sheriff or other minister, to whom the making of the return shall belong, to name and appoint, as often as need shall require, so many of such other able men of the county then present as shall make up a full jury; and the sheriff or other minister aforesaid shall, at such command of the court, return such men duly qualified as shall be present or can be found to serve on such jury, and shall add and annex their names to the former panel; provided that where a special jury shall have been struck for the trial of any issue, the talesmen shall be such as shall be impannelled upon the common jury panel to serve at the same court, if a sufficient number of such men can be found; and the king, by any one so authorized or assigned as aforesaid, and all and every the parties aforesaid, shall and may, in each of the cases aforesaid, have their respective challenges to the jurors so added and annexed, and the court shall proceed to the trial of every such issue with those jurors who were before impannelled, together with the talesmen so newly added and annexed, as if all the said jurors had been returned upon the writ or precept awarded to try the issue.

Fine on jurors
making default.
(See 7 & 8
W. 3. c. 32.
3 G. 2. c. 25.
s. 13.)

That if any man, having been duly summoned to attend on any kind of jury in any of the courts in *England* or *Wales* hereinbefore mentioned, shall not attend in pursuance of such summons, or being thrice called shall not answer to his name, or if any such man, or any talesman, after having been called, shall be present but not appear,

or after his appearance shall wilfully withdraw himself from the presence of the court, the court shall set such fine upon every such man or talesman so making default (unless some reasonable excuse shall be proved by oath or affidavit), as the court shall think meet: provided always, that where any viewer, having been duly summoned to attend on any jury, shall make default as aforesaid, the court is hereby authorized and required to set upon such viewer (unless some reasonable excuse shall be proved as aforesaid) a fine to the amount of 10*l.* at the least, and as much more as the court, under the circumstances of the particular case, shall think proper.

That every sheriff and other minister, to whom the return of juries shall belong, shall be and is hereby indemnified for impannelling and returning any man named in the jurors book, although he may not be qualified or liable to serve on juries; and that if any sheriff or other such minister shall wilfully impannel and return any man to serve on any jury before any of the courts in *England* or *Wales* hereinbefore mentioned, (except on the grand jury at any assizes or great sessions), such man's name not being inserted in the jurors book for the current year, or if such book has not been delivered, then in the jurors book last delivered, or if any clerk of assize, associate, prothonotary, clerk of the peace, or other officer of any of the courts aforesaid, shall wilfully record the appearance of any man so summoned and returned, who did not really appear, in every such case the court shall and may, upon examination in a summary way, set such fine upon such sheriff, minister, clerk of assize, associate, prothonotary, clerk of the peace, or other officer offending, as the court shall think meet.

That the sheriff, or his under-sheriff, shall from time to time register alphabetically, in proper columns, to be prepared in the jurors book for that purpose, the services of such men as shall be summoned and shall attend to serve as jurors on trials, before any court of assize or *nisi prius*, oyer and terminer, or gaol delivery, or in the said courts of the said counties palatine or great sessions, and also the times of their services; and every man so summoned, and having duly attended or served until discharged by the court, shall (upon application by him made to such sheriff or under-sheriff, before he shall depart from the place of trial,) receive a certificate testifying such his service, which certificate the sheriff or under-sheriff is hereby required to give on payment of 1*s.*: provided always, that nothing herein contained shall extend to any grand jurors or special jurors.

Viewers

Sheriff indemnified in returning any person whose name is in the list.

(See 7 & 8 W. 3. c. 32. s. 6.)

If he returns one not in the list; (See 3 G. 2. c. 25. s. 3.)

or if clerk of assize records appearances when the party did not appear, to be fined.

s. 39.

Sheriff, &c. to register the names of jurors who have served; (See 3 G. 2. c. 25. s. 5.) and give certificates.

s. 40.

Clerk of peace to make out a list of all who serve at sessions on grand or petty juries, and transmit the same to sheriff to register.

Certificates of services to be given by clerk of peace.
s. 41.

Jurors not to be summoned again within certain periods to assizes.
(See 3 G. 2. c. 25. s. 4.
4 G. 2. c. 7.)

Nor to quarter sessions.
s. 42.

That the clerk of the peace, at every sessions of the peace to be holden for any county, riding, or division in *England* or *Wales*, shall make out a list of such men as shall be summoned and shall attend to serve on any grand jury or petty jury at such sessions, together with their respective places of abode and additions, and the date of their services; and shall, within twenty days after the close of every such sessions, transmit such list to the sheriff or undersheriff of the county, who is hereby required forthwith to register the names of the men included in such list in the proper columns of the jurors book for that purpose, together with the date of their services; and every man so summoned, and having duly attended or served until discharged by the court of sessions, shall, upon application by him made to such clerk of the peace, before he shall depart from the place where the sessions are holden, receive a certificate, testifying such his service, which certificate the said clerk of the peace is hereby required to give, on payment of 1 s.

That no man shall be returned as a juror to serve at any session of *nisi prius*, or of gaol delivery, in the county of *Middlesex*, who has served as a juror at either of such sessions in the said county, in either of the two terms or vacations next immediately preceding, and has the sheriff's certificate of having so served; and no man shall be returned as a juror to serve on trials before any court of assize, nisi prius, oyer and terminer, or gaol delivery, or any of the said courts of the three counties palatine, or the said great sessions, who has served as a juror at any of such courts within one year before, in *Wales*, or in the counties of *Hereford, Cambridge, Huntingdon, or Rutland*, or four years before in the county of York, or two years before in any other county, and has the sheriff's certificate of having so served; and no man shall be returned to serve upon any grand jury or petty jury at any sessions of the peace to be holden for any county, riding or division in *England* or *Wales*, who has served as a juror at any such session within one year before in Wales, or in the counties of Hereford, Cambridge, Huntingdon or Rutland, or two years before in any other county, and has the certificate of the clerk of the peace of having so served; and if any sheriff or other minister shall wilfully transgress in any of the cases aforesaid, the court may and is hereby required, on examination and proof of every such offence in a summary way, to set such fine upon every such offender as the court shall think meet: provided that nothing herein contained shall extend to grand jurors at the assizes or great sessions, or to special jurors.

That no sheriff, under-sheriff, coroner, elisor, bailiff or other officer or person whatsoever, shall, directly or indirectly, take or receive any money or other reward, or promise of money or reward, to excuse any man from serving or from being summoned to serve on juries, or under any such colour or pretence; and that no bailiff or other officer appointed by any sheriff, under-sheriff, coroner or elisor, to summon juries, shall summon any man to serve thereon other than those whose names are specified in a warrant or mandate, signed by such sheriff, under-sheriff, coroner or elisor, and directed to such bailiff or other officer; and if any sheriff, under-sheriff, coroner, elisor, bailiff or other officer, shall wilfully transgress in any of the cases aforesaid, or shall summon any juror, not being a special juror, less than ten days before the day on which he is to attend, or shall summon any special juror less than three days before the day on which he is to attend, except in the cases hereinbefore excepted, the court of assize, nisi prius, oyer and terminer, gaol delivery, great sessions, or superior court of the said counties palatine, or court of sessions of the peace, within whose jurisdiction the offence shall have been committed, may and is hereby required, on examination and proof of such offence, in a summary way, to set such a fine upon every person so offending as the court shall think meet, according to the nature of the offence.

That if any high constable within the meaning of this Act shall, for 14 days after the warrant of the clerk of the peace shall be served on him, or left at his usual place of abode, refuse or neglect to issue and deliver his precept, as hereinbefore directed, to the churchwardens and overseers of any parish, or to the overseers of any township within his constablewick; or shall in like manner refuse or neglect to issue and deliver his precept to the churchwardens and overseers of any parish, or to the overseers of any township, where such parish or township extends into any other hundred, lathe, wapentake, or other like district besides his own, either in the same or a different county, (provided the principal church of such parish or township shall be situate within his own hundred, lathe, wapentake, or other like district); or shall refuse or neglect in any of the foregoing cases to annex to the respective precepts such a number of the forms of return as he shall *bonâ fide* deem sufficient, or to deliver such additional number as may be demanded of him by any churchwarden or overseer as aforesaid, (provided he has such additional number in his possession,) or in case of his not so having them shall refuse or neglect to apply forthwith to the clerk of the peace for such additional number, and to deliver the

No money to be taken to excuse from serving. (See 3 G. 2. c. 25. s. 6.

None summoned but those named in the warrant.

s. 43.

Penalties on high constables for neglecting to issue precepts, &c.

s. 44.

same to the party so demanding within three days after his receipt thereof; or shall on due notice refuse or neglect to attend at any such petty sessions, or such adjournment thereof as aforesaid, or to receive any list or lists there tendered by the justices present, or to deliver the same to the quarter sessions next holden for the county, riding or division, at the time and in the manner hereinbefore directed, or shall make any alteration in any such list after his receipt thereof; every such high constable offending in any of the foregoing cases shall for every such offence forfeit a sum not exceeding 10*l.*, nor less than 40*s.*, at the discretion of the justice before whom he shall be convicted.

Penalties on
churchwardens
and overseers for
neglecting to
make out lists,
&c.
s. 45.

That if any churchwarden or overseer of any parish, or any overseer of any township within the meaning of this Act, shall refuse or neglect (unless prevented by sickness) to assist in making out any list required by this Act, so that the same shall not be made out at the time and in the manner hereinbefore directed; or shall wilfully omit out of such list any man whose name ought to be inserted therein, or shall wilfully insert therein the name of any man who ought to be omitted, or shall take any money or other reward for omitting or inserting any man whatsoever, or shall wilfully insert therein a wrong description of the name, place of abode, title, quality, calling, business, or the nature of the qualification of any man; or shall refuse or neglect, in case the number of forms of return delivered by the high constable shall be insufficient, to apply to the high constable for a sufficient number, so that the list may be made out at the time and in the manner hereinbefore directed; or shall refuse or neglect to fix a copy of such list, duly signed, or to subjoin thereto such notice as hereinbefore required, on the principal door of any church, chapel, or other public place of religious worship, within their respective parishes or townships, on any of the *Sundays* on which the same ought to be so fixed; or shall refuse to allow any inhabitant of their respective parishes or townships to inspect such list, or a true copy thereof, *gratis*, at any reasonable time during the three weeks hereinbefore mentioned; or shall, on due notice, refuse or neglect to produce such list at such petty sessions as aforesaid, or to answer on oath such questions touching the same as shall there be put, or to attend at such petty sessions, or any such adjournment thereof as aforesaid; or shall refuse to allow the said petty sessions, or any justice of the peace, upon due request, to inspect or make any extracts from the poor rate of any parish or township within their respective divisions, for the purposes hereinbefore mentioned, such rate being in the custody of the party so refusing; every

such churchwarden or overseer offending in any of the foregoing cases, shall for every such offence forfeit a sum not exceeding 10 *l.* nor less than 40 *s.*, at the discretion of the justice before whom he shall be convicted; and the justice before whom such offender shall be convicted of any such offence of wrongful insertion or omission, shall forthwith, in writing under his hand, certify the same to the clerk of the peace of the county, riding or division in which the man or men so wrongfully omitted or inserted shall reside, and the said clerk of the peace shall cause the list in which such wrongful insertion or omission shall have occurred, to be corrected according to such certificate, and shall also give notice thereof to the sheriff or under-sheriff, who shall correct the jurors book accordingly.

That if any clerk of the peace shall refuse or neglect to cause a sufficient number, either of warrants, precepts, or forms of return, to be printed in the manner hereinbefore directed, or shall refuse or neglect to issue and deliver to any high constable within the meaning of this Act, the warrant and precepts as hereinbefore directed, or to annex to the same such a number of the forms of return as he shall *bonâ fide* deem sufficient, or to deliver to any high constable such additional number thereof as he may apply for, within three days after such application; or shall refuse or neglect to provide or prepare a jurors book within the time or in the manner and form hereinbefore prescribed, or to deliver the same to the sheriff or under-sheriff of the county within the time hereinbefore prescribed, or to give notice to the sheriff or under-sheriff of any wrongful insertion or omission, certified to him by any justice of the peace as aforesaid, or to deliver to any man who shall have been summoned and have duly attended or served as a grand juror, or petty juror, at the sessions of the peace, a certificate of such man's service, on his application and payment as aforesaid, or to transmit to the sheriff or under-sheriff a list of the men who shall have been so summoned, and have so attended or served, within the time and in the manner hereinbefore directed; or if any clerk of any such petty sessions, to be holden as aforesaid, shall refuse or neglect to give due notice thereof to any high constable, or to the churchwardens and overseers of any parish, or to the overseers of any township within such division; or if any sheriff or under-sheriff of a county shall make or cause to be made any alteration whatsoever in the list of jurors contained in the jurors book, except in consequence of the conviction of the churchwarden or overseer hereinbefore provided for; or if any sheriff or under-sheriff of a county, or any sheriff or secondary of London, shall neglect or

Penalties on clerks of peace and sheriffs neglecting their duty.

s. 46.

Sheriff - refuse to provide or prepare a list of special jurors in the manner and within the time hereinbefore prescribed, or shall wilfully write or cause to be written therein the name of any person not qualified, or shall wilfully omit thereout the name of any person duly qualified as a special juror, or shall neglect or refuse to write or cause to be written the several numbers contained in such list upon distinct pieces of parchment or card, in the manner and within the time hereinbefore prescribed, or shall subtract or destroy, or by any default or neglect lose, any of the said pieces of parchment or card, or shall neglect or refuse, upon discovery of such loss, to supply the same within five days; or if any sheriff or under-sheriff of a county shall refuse or neglect to prepare, or keep for inspection as aforesaid, a copy of the panel in the cases hereinbefore provided for, or to register the service of any juror as hereinbefore directed, or to deliver to any man who shall have been summoned, and have duly attended or served as a juror at any court of assize, nisi prius, oyer and terminer, or gaol delivery, or in any of the said courts of the three counties palatine or great sessions, a certificate of such man's service, on his application and payment as aforesaid; or shall refuse or neglect, within ten days after the next succeeding sheriff shall be sworn into or have entered upon office, to deliver over to him, as well all the jurors books and lists that shall be made or prepared in the year of his sheriffalty, as also all such other like books and lists as were prepared in the sheriffalty of any of his predecessors, within four years then next preceding, and which were delivered over to him by any of his predecessors; every such clerk of the peace, clerk of the petty sessions, sheriff or under-sheriff, sheriff of *London* or secondary, offending in any of the said cases, shall for every such offence forfeit the sum of 50 *l.*, one moiety whereof shall be to the use of His Majesty, his heirs or successors, and the other moiety, with full costs, to such person as shall sue for the same, in any of His Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, protection or wager of law, nor more than one imparlance, shall be allowed.

Juries de medietate. (See 27 Ed. 3 st. 2. c. 8. 28 Ed. 3. c. 13. 8 H. 6. c. 29.)

s. 47.

That nothing shall extend or be construed to extend to deprive any alien indicted or impeached of any felony or misdemeanor of the right of being tried by a jury *de medietate lingue*, but that on the prayer of every alien so indicted or impeached, the sheriff or other proper minister shall, by command of the court, return for one half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had, and if not, then so many aliens as shall be found in the same town or place,

if any; and that no such alien juror shall be liable to be challenged for want of freehold or of any other qualification required by this Act; but every such alien may be challenged for any other cause, in like manner as if he were qualified by this Act.

That no justice of the peace shall be summoned or impannelled as a juror, to serve at any sessions of the peace for the jurisdiction of which he is a justice.

That the inhabitants of the city and liberty of *Westminster* shall be and are hereby exempted from serving on any jury at the sessions of the peace for the county of *Middlesex*.

(7 & 8 W. 3. c. 32. s. 9.)

That the qualification required for jurors, and the regulations for procuring lists of persons liable to serve on juries, shall not extend to the jurors or juries in any liberties, franchises, cities, boroughs or towns corporate not being counties, or in any cities, boroughs or towns being counties of themselves, which shall respectively possess any jurisdiction, civil or criminal; but that in all such places, the sheriffs, bailiffs, or other ministers having the return of juries, shall prepare their panels in the manner heretofore accustomed; Provided always, that no man shall be impannelled or returned by the sheriffs of the city of *London*, as a juror to try any issue joined in His Majesty's courts of record at *Westminster*, or to serve on any jury at the sessions of oyer and terminer, gaol delivery, or sessions of the peace, to be held for the said city, who shall not be a householder, or the occupier of a shop, warehouse, counting-house, chambers or office, for the purpose of trade or commerce, within the said city, and have lands, tenements or personal estate of the value of 100*l.*; and that the lists of men resident in each ward of the city of *London*, who shall be so qualified as herein mentioned, shall be made out, with the proper quality or addition and the place of abode of each man, by the parties who have heretofore been used and accustomed in each ward to make out the same respectively; and that such shop, warehouse, counting-house, chambers or office as aforesaid shall, for the purposes of this Act, be respectively deemed and taken to be the place of abode of every occupier thereof: Provided also, that no man shall be impannelled or returned to serve on any jury for the trial of any capital offence in any county, city or place, who shall not be qualified to serve as a juror in civil causes within the same county, city or place; and the same matter and cause being alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge; and the person so challenged shall and may be examined on oath of the truth of the said matter.

Justices not to be summoned as jurors at sessions. s. 48.

Inhabitants of *Westm.* not liable to serve at *Midd.* sessions. s. 49.

Qualification of jurors in liberties, cities and boroughs, to remain as before.

Qualification in *London*. (See 3 G. 2. c. 25. s. 19.)

(3 G. 2. c. 25. s. 29.)

Persons, unless qualified to serve as jurors in civil causes, not to be returned to serve on trials for capital offences.

s. 50.

Courts of Nisi Prius, &c. in London may fine jurors.

s. 51.

Qualification of jurors on inquests, &c.

s. 52.

That every court of nisi prius, oyer and terminer, gaol delivery and sessions of the peace, held for the city of *London*, shall and may fine any man duly summoned to attend upon any kind of jury in any of such courts respectively, and making default, or any talesman or viewer making default, in the same manner to all intents and purposes as such respective courts in *England* and *Wales* herebefore mentioned.

That no man shall be liable to be summoned or impannelled to serve as a juror in any county in *England* or *Wales*, or in *London*, upon any inquest or inquiry to be taken or made by or before any sheriff or coroner, by virtue of any writ of inquiry, or by or before any commissioners appointed under the Great Seal, or the seal of the court of Exchequer, or the seals of the courts of the said counties palatine, or the seals of the courts of great session of *Wales*, who shall not be duly qualified according to this Act to serve as a juror upon trials at nisi prius in such county in *England* or *Wales*, or in *London*, respectively: provided always, that nothing herein contained shall extend to any inquest to be taken by or before any coroner of a county, by virtue of his office, or to any inquest or inquiry to be taken or made by or before any sheriff or coroner of any liberty, franchise, city, borough or town corporate, not being counties, or of any city, borough or town being respectively counties of themselves, but that the coroners in all counties, when acting otherwise than under a writ of inquiry, and the sheriffs and coroners in all such places as are herein mentioned, shall and may respectively take and make all inquests and inquiries by jurors of the same description as they have been used and accustomed to do before the passing of this Act.

Sheriffs, coroners, and commissioners may fine jurors for non-attendance.

That if any man having been duly summoned and returned to serve as a juror in any county in *England* or *Wales*, or in *London*, upon any inquest or inquiry before any sheriff or coroner, or before any of the commissioners aforesaid, shall not, after being openly called three times, appear and serve as such juror, every such sheriff, or in his absence the under-sheriff or secondary, and such coroner and commissioners respectively, are hereby authorized and required (unless some reasonable excuse shall be proved on oath or affidavit) to impose such fine upon every man so making default as they shall respectively think fit, not exceeding 5*l.*; and every such sheriff, under-sheriff, secondary, coroner and commissioners respectively, shall make out and sign a certificate, containing the christian and surname, the residence and trade or calling of every man so making default, together with the amount of the fine

imposed, and the cause of such fine, and shall transmit such certificate to the clerk of the peace for the county, riding or division in which every such defaulter shall reside, on or before the first day of the quarter sessions next ensuing; and every such clerk of the peace is hereby required to copy the fines so certified on the roll on which all fines and forfeitures imposed at such quarter sessions shall be copied; and the same shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties, in all respects, as if they had been part of the fines imposed at such quarter sessions.

(See 3 G. 4.
c. 46.)

s. 53.

That every man duly summoned and returned to serve upon any jury for the trial of any cause or criminal prosecution, to be tried in any court of record holden within the said city of *London*, other than the courts hereinbefore respectively mentioned, or in any other liberty, franchise, city, borough, or town, who shall not appear and serve on such jury (after being openly called three times, and on proof being made on oath of the man so making default having been duly summoned), shall forfeit and pay, for every such his default, such fine, not exceeding 40s. nor less than 20s. as the court shall deem reasonable to impose, unless some just cause for such defaulter's absence shall be made appear, by oath or affidavit, to the satisfaction of the court; and that if any person on whom such fine shall be imposed shall refuse to pay the same to the person who shall be authorized by the court to receive the same, it shall be lawful for such court then, or at its next sitting, and the same is hereby authorized and required, by order of the court, signed by the proper officer thereof, to cause every such fine to be levied by distress and sale of the goods and chattels of the person on whom such fine shall have been imposed; and the overplus money, if any, which shall remain after payment of such fine, and deducting the reasonable charges of such distress and sale, shall be rendered to the person whose goods and chattels shall have been so distrained and sold; and that every fine which shall be so imposed shall, when received or levied, be paid by the person who shall receive or levy the same to the proper officer of the liberty, &c. in which the court was holden wherein such fine was imposed, to be applied to such uses as issues set on jurors, or other fines set in courts holden within such liberty, &c., are by charter, prescription, or usage applicable.

Persons summoned to serve on juries in inferior courts not attending, (see 29 G. 2. c. 19.) to forfeit not more than 40s. nor less than 20s. unless the court be satisfied with the cause of absence.

Fine leviable by distress and sale.

Fine to be paid to the proper officer of the court, to be disposed of as other fines of court.

s. 54.

That all fines to be imposed under this act by any of the king's courts of record at Westminster, or any of the superior courts, civil or criminal, of the three counties palatine, or by any court of assize, nisi prius, oyer and

How fines and penalties shall be recovered and applied.
s. 55.

s. 56.

terminer, or gaol delivery, or by any court of sessions of the peace in *England*, or by any court of great sessions or sessions of the peace in *Wales*, shall be levied and applied in the same manner as any other fines imposed by the same court; [and that all other penalties hereby created (for which no other remedy is given) shall on conviction of the offender before any one justice of the peace within his jurisdiction, be levied, unless such penalty be forthwith paid, by distress and sale of the offender's goods and chattels, by warrant under the hand seal of such justice, who is hereby authorized to hear and examine witnesses on oath or affirmation on any complaint, and to determine the same, and to mitigate the penalty, if he shall see fit, to the extent of one moiety thereof; and all penalties, the application whereof is not herein-before particularly directed, shall be paid to the complainant; and for want of sufficient distress, the offender shall be committed, by warrant under the hand and seal of such justice, to the common gaol or house of correction, for such term not exceeding six calendar months, as such justice shall think proper, unless such penalty be sooner paid.

And for the more easy and speedy conviction of offenders against this act, it is further enacted, that the justice before whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet*,

Form of
conviction.

“BE it remembered, that on _____ in the
“year of Lord _____ at _____ *A. B.* is convicted
“before me, *C. D.*, one of His Majesty's justices of the
“peace for the _____ of _____, for that he the said
“*A. B.* did [*specifying the offence, and the time and place*
“*where the same was committed, as the case shall be*], and
“the said *A. B.* is for his said offence adjudged by me
“the said justice to forfeit and pay the sum of _____
“Given under my hand and seal the day and year first
“above mentioned.”

Conviction not
to be quashed
for want of
form.
s. 57.

That no such conviction shall be quashed for want of form, or be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of His Majesty's courts of record at *Westminster*; and that where any distress shall be made for any penalty to be levied by virtue of this act, the distress itself shall not be deemed to be unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall such party be deemed a

trespasser *ab initio* on account of any irregularity which shall be afterwards done by him; but the person aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action upon the case, first giving notice in writing of the cause of action to the opposite party, one calendar month before the commencement of such action; but no plaintiff shall recover in any action for such irregularity, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the party distraining. s. 57.

That if any suit or action shall be prosecuted against any person for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon. Persons sued for any thing done in pursuance of this Act may plead the general issue. s. 58.

That all actions, suits, and prosecutions, to be commenced against any person for any thing done in pursuance of this act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and that notice in writing of such cause of action shall be given to the defendant or defendants one calendar month at least before the commencement of the action. Venue to be laid in the county where the fact is committed. s. 59.

That from and after the passing of this act, it shall not be lawful either for the king, or any one on his behalf, or for any party or parties, in any case whatsoever, to commence or prosecute any writ of attain against any jury or jurors, for the verdict by them given, or against the party or parties who shall have judgment upon such verdict; and that no inquest shall be taken to inquire of the concealments of other inquests; but that all such attaints and inquests shall henceforth cease, become void, and be utterly abolished; any law, statute or usage to the contrary notwithstanding. Writs of attain to be abolished. s. 60.

That notwithstanding any thing herein contained, every person who shall be guilty of the offence of embracery, and every juror who shall wilfully or corruptly consent Embracers and corrupt jurors punishable by

fine and imprisonment.

s. 61.

Commencement of Act.

s. 62.

Repeal of Acts.

43 H. 3.

52 H. 3. c. 14.

12 Ed. 1.

13 Ed. 1. c. 30.

28 Ed. 1. c. 9.

34 Ed. 1. c. 3.

5 Ed. 3. c. 6.

27 Ed. 3. st. 2. c. 8.

28 Ed. 3. c. 13.

34 Ed. 3. c. 4.

c. 8.

c. 13.

thereto, shall and may be respectively proceeded against by indictment or information, and be punished by fine and imprisonment, in like manner as every such person and juror might have been before the passing of this act.

That those parts of this act which relate to the issuing of warrants and precepts for the return of jury lists, the preparation, production, reformation, and allowance of those lists, the holding of the petty sessions for those purposes, the formation of a jurors book, and the delivery thereof to the sheriff, and the preparation of a list of special jurors, and of parchments or cards, in the manner herein-before mentioned, shall commence and take effect so soon after the passing of this act as the proper periods for doing those things shall occur; and that the rest of this act shall commence and take effect on the 1st *January* 1826; and that from and after the commencement of the several parts of this act respectively, so much of 43 *H. 3.* as relates to exemptions from assizes, juries, and inquests; and so much of 52 *H. 3. c. 14.* as relates to the like exemptions; and so much of the same statute as provides that all, being 12 years of age, ought to appear at inquests for the death of man; and so much of the 12 *Ed. 1.* as relates to persons of 12 years of age being summoned upon coroners' inquests; and so much of 13 *Ed. 1. c. 30.* as directs that the justices shall not put in assizes or juries any other than those that were summoned to the same at first; and so much of the same statute as ordains how many and what sort of persons shall be returned on juries and petty assizes; and the 21st of the same reign, intituled, *Statutum de illis qui debent poni in Juratis et Assisis*; and so much of 28 *Ed. 1. c. 9.* as declares how inquests and juries are to be impannelled; and the ordinance made in the 33d year of the same reign; and so much of 34 *Ed. 1. c. 3.* as enjoins that none of the ministers therein mentioned be put in assizes, juries, or inquests without the forest; and so much of 5 *Ed. 3. c. 6.* as relates to the punishment of a corrupt juror; and so much of a statute, made in the 20th year of the same reign, as relates to the punishment of embracers and corrupt jurors; and so much of 27 *Ed. 3. st. 2. c. 8.* as prescribes the mode of trial where one party or both parties are aliens; and so much of 28 *Ed. 3. c. 13.* as directs how all manner of inquests and proofs shall be taken between aliens and denizens; and so much of 34 *Ed. 3. c. 4.* as accords that panels of inquests shall be of the neighbourhood; and so much thereof as directs the proceedings against jurors taking a reward to give their verdict; and so much thereof as relates to the qualification of jurors on inquests of escheat; and so much of 36 *Ed. 3.*

st. 1. c. 13, as relates to jurors on inquests of escheat ; 36 Ed. 3. st. 1. c. 13.
 and so much of 38 Ed. 3. st. 1. c. 12, as ordains the 38 Ed. 3. st. 1. c. 12.
 penalty on corrupt jurors and embracers ; and so much of 42 Ed. 3. c. 11, as directs that panels in assizes shall be 42 Ed. 3. c. 11.
 arrayed four days before the sessions, and what sort of jurors shall be put therein ; and so much of 7 Ric. 2. c. 7. 7 Ric. 2. c. 7.
 as relates to granting a writ of *nisi prius* at the suit of any jurors ; and so much of 11 H. 4. c. 9. as directs that jurors 11 H. 4. c. 9.
 in indictments shall be returned by the sheriffs or bailiffs, without the domination of any ; and so much of 2 H. 5. 2 H. 5. st. 2. c. 3.
 st. 2. c. 3, as relates to the qualification of jurors ; and so much of 6 H. 6. c. 2, as relates to the panels in special 6 H. 6. c. 2.
 assizes ; and so much of 8 H. 6. c. 29. as relates to inquests and proofs taken between aliens and denizens ; and so much 8 H. 6. c. 29.
 of 23 H. 6. c. 9. as ordains that no sheriff or under-sheriff shall return any of their officers or servants in any of the 23 H. 6. c. 9.
 cases therein mentioned ; and so much of 33 H. 6. c. 2. as 33 H. 6. c. 2.
 relates to the qualification of jurors taking indictments, in the county palatine of *Lancaster*, and in other counties ; and so much of 8 Ed. 4. c. 3. as relates to jurors in *Middlesex* ; and 8 Ed. 4. c. 3.
 1 Ric. 3. c. 4. intituled, An act for returning of sufficient jurors ; and 19 H. 7. c. 13. intituled, *De Riotis Reprimendis* ; 1 Ric. 3. c. 4.
 and so much of 1 H. 8. c. 8. as enacts what qualification 19 H. 7. c. 13.
 every juror returned before escheators or commissioners of the crown shall have within the same shire where the inquiry 1 H. 8. c. 8.
 shall be made ; and so much of 3 H. 8. c. 2. to perpetuate 3 H. 8. c. 2.
 the last mentioned Act, as perpetuates that part thereof which is therein referred to ; and 3 H. 8. c. 12. intituled, 3 H. 8. c. 12.
 An act against sheriffs for abuses ; and so much of 4 H. 8. c. 3. intituled, *Pour le Juris infra Civitatem London* ; and 4 H. 8. c. 3.
 of 5 H. 8. c. 5. intituled, An act concerning juries in *London*, as relates to jurors impannelled for the trial of issues 5 H. 8. c. 5.
 joined in any of the courts at *Westminster*, and triable in the city of *London* ; and so much of 5 H. 8. c. 6. as relates 5 H. 8. c. 6.
 to juries ; and so much of 22 H. 8. c. 14. s. 6. as relates to peremptory challenges in murder and felony ; and so much of 22 H. 8. c. 14.
 33 H. 8. c. 23. s. 2. as relates to challenges for want of freehold ; and so much of 34 & 35 H. 8. c. 26. s. 103, 7. 8. as 33 H. 8. c. 23. s. 2.
 relates to tales, and to the qualification of jurors in the cases therein mentioned ; and the 35 H. 8. c. 6. intituled, 34 & 35 H. 8.
 An act concerning the appearance of jurors in the *Nisi Prius* ; and so much of 1 Ed. 6. c. 12. s. 11. as relates 35 H. 8. c. 6.
 to challenges for the hundred ; and so much of 2 & 3 Ed. 6. c. 32. as relates to the said Act of 35 H. 8. ; and the 4th 1 Ed. 6. c. 12. s. 11.
 & 5th P. & M. c. 7. intituled, An act to make up the jury 2 & 3 Ed. 6. c. 32.
de circumstantibus, where the King and Queen's majesty is a party ; and the 5th El. c. 45. intituled, An act to fill up 4 P & M. c. 7.
 juries *de circumstantibus* lacking in *Wales* ; and the 14th El. c. 9. intituled, An act declaring that the tenant and de- 5 El. c. 45.
 14 El. c. 9.

27 El. c. 6. 7.

39 El. c. 18. s. 32.

1 W. & M. st. 2.
c. 2.

4 & 5 W. & M.
c. 24. s. 15. 22.

6 & 7 W. & M. c. 4.

7 & 8 W. & M.
c. 32.

1 Ann. st. 2.

c. 13. s. 2. 3.

3 & 4 Ann. c. 18.
s. 3. 6.

4 Ann. c. 16.

s. 6. 9.

7 Ann. c. 21.
s. 11.

10 Ann. c. 14.
s. 3. 6.

9 G. 1. c. 8. s. 1. 2.

3 Geo. 2. c. 25.

4 Geo. 2. c. 7.

6 Geo. 2. c. 37.
s. 1. 2.

24 Geo. 2. c. 18.

29 Geo. 2. c. 19.

13 Geo. 3. c. 51.
s. 6. 8.

1 & 2 Geo. 4.
c. 46.

5 Geo. 4. c. 106.
s. 29.

Not to affect
the Acts relating
to Quakers and
Moravians. (7 & 8 W. 3. c. 31. 22 G. 2. c. 30.) s. 63.

Not to affect
powers unre-
pealed.
s. 64.

pendant may have a *tales de circumstantibus*, as well as the demandant or plaintiff; and the 27 El. c. 6 & 7. the one intituled, An act for the returning of sufficient jurors, and for the better expedition of trials; and the other intituled An act for the levying of issues lost by jurors; and so much of 39 El. c. 18. s. 32. as relates to the said last-mentioned Act; and so much of 1 W. & M. st. 2. c. 2. s. 1. as declares that jurors which pass upon men in trials for high treason ought to be freeholders; and so much of 4 & 5 W. & M. c. 24. s. 15 to 22, as relates to jurors; and so much of 6 & 7 W. & M. c. 4. as relates to juries; and the 7th & 8th W. & M. c. 32. intituled, An act for the ease of jurors, and better regulating of juries; and so much of 1 Ann. st. 2. c. 13. s. 2, 3. as continues the said Act of 7 & 8 W. 3; and also so much thereof as relates to the qualification of jurors in the county of York; and so much of 3 & 4 Ann. c. 18. s. 3 to 6. as relates to jurors; and so much of 4 Ann. c. 16. s. 6 to 9. as relates to writs of *venire facias*, and to jurors having the view; and so much of 7 Ann. c. 21. s. 11. as relates to giving a list of the jury to the party indicted of high treason or misprision of treason; and so much of 10 Ann. c. 14. s. 3 to 6, as relates to juries and jurors; and so much of 9 Geo. 1. c. 8. s. 1 & 2. as relates to jurors and juries; and the 3 Geo. 2. c. 25. intituled, An act for the better regulation of juries; and the 4th G. 2. c. 7. intituled, An act to explain and amend an Act made in the 3d year of His Majesty's reign, intituled, An act for the better regulation of juries, so far as the same relates to the county of *Middlesex*; and so much of 6 G. 2. c. 37. s. 1 & 2. as makes the said Acts of the 3d & 4th years of the same reign perpetual, and as relates to special juries; and so much of 24 G. 2. c. 18. as relates to special juries and writs of *venire facias* and challenges of the array; and the 29 G. 2. c. 19. intituled, An act to empower judges of courts of record in cities and towns corporate, liberties and franchises, to set fines on persons who shall be summoned to serve upon juries in such courts, and shall neglect to attend; and so much of 13 G. 3. c. 51. s. 6 to 8. as relates to special juries; and the 1 & 2 G. 4. c. 46. intituled, An act to regulate the attendance of jurors at the assizes, in certain cases; and so much of 5 G. 4. c. 106. s. 29. as relates to the qualification of jurors; shall be, and the same are hereby repealed.

Provided always, that nothing shall be construed to affect or alter any part of the 7th and 8th W. 3. c. 34. and of the 22d G. 2. c. 30, relating to Quakers and Moravians.

Provided also, that nothing shall extend or be construed to extend to alter, abridge or affect any power or authority which any court or judge now hath, or any practice or form

in regard to trials by jury, jury process, juries or jurors, except in those cases only where any such power or authority, practice or form, is repealed or altered by this Act, or is or shall be inconsistent with any of the provisions thereof, nor to abridge or affect any privilege of parliament.

Warrant for returning Lists of Jurors,
(under 6 G. 4. c. 50.)

County of — } TO the high constable [*or to*
to wit, } one of the high constables] of the hundred,
[lathe, wapentake, *or other like district*] of
within the county aforesaid.

These are to require you, within fourteen days after the receipt hereof, to issue and deliver (in the form hereunto annexed, or as near thereto as may be,) your precepts to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships within your constablewick, requiring them to make out and return true lists of jurors; and you are at the same time to annex to each precept a sufficient number of the forms of returns left herewith, and if you find that the number now left with you is not sufficient for all the places in your constablewick you are to apply to me for more; and you are further required to attend at a petty sessions in the last week of *September* next, (of which you shall have due notice,) and such lists as you shall there receive you are to deliver to the next court of quarter sessions for this county, [riding *or* division,] on the first day of its sitting, and at the same time to make oath of your receipt of such lists, and that no alteration has been made therein since your receipt of them.

If there is any parish within your constablewick that has no overseers of the poor except the churchwardens, you are in such case to treat them as the churchwardens and overseers of such parish, and to direct your precept, together with a sufficient number of forms of return, to them accordingly; and if there is any parish or township which extends into any other constablewick besides your own, you are to treat every such parish or township as within your constablewick, provided the principal church of such parish or township is situated within your constablewick, and you are to issue your precepts, with a sufficient number of forms of return, accordingly; and these several matters you are in nowise to omit, upon the peril that shall ensue. Given under my hand, at _____ in the said county, the _____ day of _____ in the year

Clerk of the peace
for the said county [*riding or division.*]

Precept for returning Lists of Jurors.

County of ——— } TO the churchwardens and overseers of
 to wit. } the poor of the parish [*or to the over-*
 Hundred of ——— } seers of the poor of the township] of

By virtue of a warrant from the clerk of the peace of the said county [*riding or division*] unto me directed, you are hereby required to make out, before the 1st day of *September* next, a true list in writing, in the form hereunto annexed, containing the names of all men, being natural-born subjects of the king, between the ages of 21 and 60, residing within your parish [*or township*], qualified to serve upon juries; that is say, of every such man who has in his own name, or in trust for him, a clear income of 10 *l.* by the year in lands or tenements, whether of freehold, copyhold or customary tenure or of ancient demesne, situate in the said county, or in rents issuing out of any such lands or tenements, or in such lands, tenements and rents taken together, in fee-simple or fee-tail, or for his own life, or for the life of any other person; and also of every such man who has a clear income of 20 *l.* by the year in lands or tenements, situate in the said county, held by lease for the absolute term of 21 years, or some longer term, or for any term of years determinable on any life or lives; and also of every such man who is a householder in your parish [*or township*], and is rated or assessed to the poor rate or to the inhabited house duty on a value of not less than 20 *l.* [*if in Middlesex 30 l.*], and also of every such man who occupies a house in your parish [*or township*] containing not less than 15 windows; and you are required to make out the said list in alphabetical order, and to write the christian and surname of every man at full length, and the place of his abode, his title, quality, calling or business, and the nature of his qualification, in the proper columns of the forms hereunto annexed, according to the specimens given in such columns for your guidance.

And if you have not a sufficient number of forms you must apply to me for more; and in order to assist you in making out the list, you are to refer to the poor rate, and you may, if you think proper, apply to any collector or assessor of taxes, or any other officer who has the custody of any house-tax, land-tax, or other tax assessment for your parish [*or township*], and take from thence the names of men so qualified: and in making such list you are to omit the names of all peers, all judges, all clergymen, all Roman-catholic priests who shall have duly taken and subscribed the oaths and declaration required by law;

all ministers of any congregation of Protestant Dissenters whose place of meeting is duly registered, 'provided they follow no secular occupation except that of a schoolmaster, and produce to you a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law ; all serjeants and barristers at law, all members of the society of Doctors of Law, and all advocates of the civil law, if actually practising, and all attornies, solicitors and proctors, if actually practising, and having taken out their annual certificates ; all officers of the courts of law and equity, and of the Admiralty and Ecclesiastical courts, if actually exercising the duties of their respective offices ; all coroners, all gaolers and keepers of houses of correction ; all members and licentiates of the Royal College of Physicians in *London*, all members of the Royal Colleges of Surgeons in *London*, *Edinburgh* and *Dublin*, and apothecaries certificated by the court of Examiners of the Apothecaries Company, if actually practising as physicians, surgeons or apothecaries respectively ; all officers of the navy and army on full pay ; all pilots licensed by by the Trinity-house of *Deptford Strond*, *Kingston-upon-Hull*, or *Newcastle-upon-Tyne*, and all masters of vessels in the buoy and light service employed by either of those Corporations, and all pilots licensed by the lord warden of the Cinque Ports, or under any act of parliament or charter for the regulation of pilots in any other port ; all the household servants of His Majesty ; all officers of customs and excise ; all sheriff's officers, high constables and parish clerks ; and also all persons exempt by virtue of any prescription, charter, grant or writ.

And when you have made out such list, you are authorized to order a sufficient number of copies thereof to be printed, [the expense of which printing will be allowed you by the parish [*or township*], and you are required, on the three first *Sundays* in *September* next, to fix a copy of such list, signed by you, on the principal door of every church, chapel, or other public place of religious worship within your parish [*or township*], and also to subjoin to every such copy a notice to the following effect, inserting the time and place, of which you shall be previously informed : " Take notice, that all objections to the foregoing list will be heard by the justices in petty sessions, on the day of *September* next, at the hour of at ;" and you must allow any inhabitant of your parish [*or township*] to inspect the original list, or a true copy of it, during the three first weeks of *September* next, *gratis* ; and you are also further required to produce the said list at such petty sessions, and there to answer, on oath, such questions as

shall be put to you by His Majesty's justices of the peace there present, touching the said list; and these several matters you are in nowise to omit, upon the peril that may ensue. Given under my hand at _____ in the said county, the _____ day of _____ in the year _____ High constable.

The Form of Precept in *Wales* is to be altered according to the difference of qualification.

Form of Return.

6 G. 4. c. 50. County of _____ } THE return of the churchwardens and
to wit. } overseers [*or* of the overseers] of the
of _____ in the hundred of _____ in the said county,
of men qualified to serve on juries.

Parish or Township ; in Towns, add the Name of the Street.	Christian and Surname at full length.	Title, Quality, Calling, or Business.	Nature of Qualification.
All Saints, Derby :			
King-street -	Adams, John -	Esquire -	Freehold.
Duke-street -	Bond, Henry -	Baker -	Leasehold.
High-street -	Boyd, George -	Grocer -	Poor Rate.
Duke-street -	Cole, Charles -	Butcher -	House Assessment.
Church-street -	Cook, John -	Innkeeper -	Windows.

The sheriff cannot claim any compensation for summoning special jurors, nor extra expenses when they live at a distance, it being a part of his general duty (*a*).

Sessions.

Sessions, what. THE sessions of the peace is a court of record, holden before two or more justices, whereof one is of the *quorum*, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament (*b*).

Difference between general, quarter, and special sessions. It seems that the *general* sessions and *quarter* sessions are not synonymous; but that the quarter sessions are
(*a*) Lane v. Sewell, 1 Ch. 175. (*b*) Dalt. 5.

a species only of the general sessions, and that such sessions only are properly called general quarter sessions which are holden in the four quarters of the year, in pursuance of the 2 *H.* 5; and that any other sessions, holden at any other time for the general execution of the justices authority, which by the said statute they are authorized to hold oftener than at the times therein specified, if need be, may be properly called *general sessions*, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special sessions* (c).

By the 12 *R.* 2, the justices shall keep their sessions in every quarter of the year at least, and by three days, if need be, on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain.

c. 10.
At what time
the sessions
shall be kept.

By the 11 *Geo.* 4, & 1 *W.* 4, the justices shall hold their general quarter sessions of the peace in the first week after the 11th day of *October*, in the first week after the 28th day of *December*, in the first week after the 31st day of *March*, and in the first week after the 24th day of *June*.

c. 70, s. 35.

“County of — — *J. P.* and *K. P.* esquires, justices of
“our sovereign lord the king, assigned to keep the peace
“in the county of aforesaid, and also to hear and
“determine divers felonies, trespasses, and other misde-
“meanors committed in the said county, and one of us of
“the *quorum*; to the sheriff of the same county, greeting:
“On the behalf of our said sovereign lord the king, we
“command you, that you omit not, by reason of any
“liberty in your county, but that you enter therein, and
“that you cause to come before us, or others, justices
“assigned to keep the peace in the said county, and also
“to hear and determine divers felonies, trespasses, and
“other misdemeanors in the said county committed, on
“the day of now next ensuing,
“at the hour of ten in the forenoon of the same day, at
“in the said county, twenty-four good and lawful
“men of the body of the county aforesaid, then and there
“to inquire, present, do, and perform all and singular such
“things, which on the behalf of our said sovereign lord the
“king shall be enjoined them: also that you make known
“to all coroners, keepers of gaols and houses of correction,
“high constables, and bailiffs of liberties, within the county
“aforesaid, that they be then there to do and fulfil those

Precept to
summon the
session; from
the justices to
the sheriff.

(c) 2 Hawk. 42.

“ things which by reason of their offices shall be to be
 “ done: moreover, that you cause to be proclaimed
 “ through the said county, in proper places, the aforesaid
 “ sessions of the peace to be held at the day and place
 “ aforesaid; and do you be then there to do and execute
 “ those things which belong to your office: and have you
 “ then there as well the names of the jurors, coroners,
 “ keepers of gaols and houses of correction, high constables,
 “ and bailiffs aforesaid, as also this precept. Given
 “ under our seals at *A.* in the county aforesaid, the
 “ day of in the year of the reign of &c.” (*d*).

The sheriff's return.

The execution of this precept appears in certain panels hereunto annexed :

“ I further certify that I have given notice to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties, within my county, to be
 “ and appear at the time and place within mentioned, to
 “ do and perform, &c. and have caused to be proclaimed
 “ through my county, in proper places, the sessions within
 “ mentioned. The answer of

Then on a piece of parchment write the names of the jurors to inquire for our lord the king, &c. thus :

The names of the jurors to inquire.

The names of the jurors to try.

Coroners, keepers, of gaols, &c.

Sheriff to provide a place to hold the session. And convey offenders to the gaol. Ought also to attend; and for why.

The sheriff is to provide and make ready a fit and decent place for the justices of the peace to hold their general quarter sessions. And the sheriff is to convey all offenders to the gaol, at the appointment of the justices of the peace. He or his under-sheriff ought also to attend the justices at their general sessions of the peace to return the precept, and to take charge of prisoners, and to serve the court otherwise, as he hath in charge by the *mandamus* that is mentioned in the commission of the peace; the other because the sheriff hath also care and charge of the peace, and so is there to object against such persons as shall be committed by him (*e*).

Upon receipt of precept to summon quarter sessions, how to act.

The sheriff, upon receipt of the precept of any two justices (one to be of the *quorum*) is to summon the session of the peace, and to return a grand jury of 24 men before them or their fellow justices, at a certain day and place appointed; but such precept ought to bear *teste*

(*d*) Lamb. 381.

(*e*) Dalt. 372.

fifteen days before the return, and ought to be forthwith delivered to the sheriff, that he may have sufficient time to proclaim the sessions, and to give notice to all *stewards, constables, and bailiffs of hundreds and liberties, coroners, and other officers*, to be present and to do their duties at such day and place, and to proclaim in proper places, throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty (*f*).

When the sheriff hath received the precept from the clerk of the peace, he must direct several warrants to the several bailiffs of hundreds, rapes and liberties, containing in them the substance of the said precept, to summon them to appear at the sessions, &c.

To grant precepts for summoning sessions.

And if the sheriff shall make default of attendance at the sessions, the justices may fine or amerce him.

If default be made.

All *bailiffs* and other ministers of *liberties* ought also to attend, and must execute their process.

Bailiffs, &c. to attend.

27 H. 8. c. 15.

This act is not limited to civil process, but bailiffs of liberties are also bound to summon jurors and attend the justices (*g*).

But the justices have no authority to fix the bailiff's fees for arrests in civil suits; nor will the court allow more than the usual fee, notwithstanding any long continued practice to the contrary (*h*).

The justices out of sessions, as well as from their sessions, may, in many cases, direct their precepts or warrants, and other process, to the sheriff, &c., and he shall execute the same (*i*).

Justices may direct their precepts, &c. to sheriff.

——— } *J. P.* esq. sheriff of the county aforesaid, to
to wit. } *A. B.* and *C. D.*, my bailiffs of the hundred of
G., greeting: By virtue of His Majesty's writ to me directed; these are in His Majesty's name to will and require you, that you forthwith make known, by open proclamation, in every market town, and all other places convenient, within your said hundred, that the next general and quarter sessions of the peace, of and for the county aforesaid, is to be holden and kept at _____ in the county aforesaid, on _____ being the _____ day of _____ next coming, by eight o'clock in the forenoon of the same day; and that you give notice to all justices of the peace, coroners, stewards, gaolers and chief constables.

Warrant to summon.

(*f*) 2 Haw. 41.

(*h*) *Boldero v. Mosse*, 3 T. R.

(*g*) *Rex v. Jaram*, 4 B. & Cr. 417.

(*i*) *Dalt*, 373.

bles of your hundred, that they be then and there present to do and perform that which to their several offices doth appertain : and that all those that ought to prosecute any prisoner or prisoners in the gaol of the said county, or bound over then to appear and answer, be then and there present to prosecute against them according to law : and also that you summon and warn the persons whose names are underwritten, that they be then and there present to serve on the grand jury, and to inquire, on His Majesty's behalf, for the body of the county aforesaid, of all such matters and things as shall be then and there given them in charge ; and also, that you summon and warn the persons underwritten, being able and sufficient freeholders of your hundred, that they be then and there present to serve on the petty jury, for His Majesty's service ; and that you yourself be then and there present to make return hereof. And herein neither you nor them may fail, and at your and their perils. Given under the seal of my office, the
 day of and in the year of the reign of,
 &c., and in the year of our Lord

Grand jury.

A. B.

C. D.

(name them)

Petty jury.

E. F.

G. H.

If there are persons to be called on recognizances, then how to add to the process.

If there are any persons to be called on their recognizances, &c. then if the precept commands the sheriff to summon or distrain, &c. add this :

“ I also command you to summon *C. D.*, of, &c., and to
 “ distrain the inhabitants of the hundred of *C.* so that they
 “ be and appear before the justices aforesaid, at the time
 “ and place aforesaid, and also that you take *E. F.* of, &c.
 “ *J. K.* of, &c. so that I may have their bodies before the
 “ said justices at the time and place aforesaid, to answer
 “ to our said lord the king of and concerning divers tres-
 “ passes and other misdemeanors whereof they stand in-
 “ dicted. Hereof fail not, as you will answer at your peril.
 “ Given under my hand and seal of office.” &c.

By the same sheriff.

The sheriff, or his under-sheriff, is likewise to pay the justices their wages, which are 4*s.* each per diem, and 2*s.* per diem to the clerk of the peace, which are allowed the sheriff again in his account.

Circuit.

Courts of assize and *nisi prius*, to be composed of two or more commissioners.

THE courts of assize and *nisi prius* are composed of two or more commissioners, who are twice in every year sent by the king's special commission all round the kingdom, (except *London* and *Middlesex*;) to try, by a

jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of *Westminster Hall*. They came into use in the room of the ancient justices in eyre, who made their circuit once in seven years, for the purpose of trying causes (k).

When came
into use.

The present justices of assize and *nisi prius* are derived from the statute of *Westm.* 2. 13 *Ed.* 1. 14 *Ed.* 3., and must be two of the king's justices, of the one bench or the other, or the chief baron of the Exchequer, or the king's serjeants sworn; and usually make their circuits after *Hilary* and *Trinity* terms.

The present
justices.
c. 30.
c. 16.

3 *Ed.* 1. c. 51.

No man could formerly be judge of assize in his own county, but now he may.

8 *Ric.* 2. c. 2.
33 *Hen.* 8. c. 24.
49 *Geo.* 3. c. 91.

The judges sit by virtue of five several authorities. 1. The commission of the peace. 2. A commission of oyer and terminer. 3. A commission of general gaol delivery. 4. A commission of assize, directed to the judges and clerk of assize, to take the assizes; that is, to take the verdict of a peculiar species of jury called an assize, and summoned for the trial of landed disputes. 5. That of *nisi prius*, which is a consequence of the commission of assize being annexed to the office of those justices by the 13 *Ed.* 1. c. 30, and it empowers them to try all questions of fact issuing out of the courts at *Westminster*, that are then ripe for trial by jury. The original of the name is this: all causes commenced in the courts of *Westminster Hall* are by the course of the courts appointed to be there tried, on a day fixed in some *Easter* or *Michaelmas* term, by a jury returned from the county wherein the cause of action arises; but with this proviso, *nisi prius justiciarii ad assisas capiendas venerint*; unless before the day prefixed, the judges of assize come into the county in question. This they are sure to do in the vacations preceding *Easter* and *Michaelmas* terms, and there dispose of the cause, which saves much expense and trouble, both to the parties, the jury, and the witnesses.

The several counties in *England* are divided into six circuits; *viz.*

The *Midland*, containing the counties of—Northampton; Rutland; Lincoln; Nottingham; Derby; Leicesters; Warwick.

Circuits.

(k) Co. Litt. 293. Mag. Cart. 12.

Norfolk.—Bucks ; Cambridge ; Huntingdon ; Bedford ; Norfolk ; Suffolk.

Home.—Hertford ; Essex ; Kent ; Sussex ; Surrey.

Oxford.—Berks ; Oxford ; Hereford ; Salop ; Gloucester ; Monmouth ; Stafford ; Worcester.

Western.—Southampton ; Wilts ; Dorset ; Devon ; Cornwall ; Somerset.

Northern.—York ; Durham ; Northumberland ; Cumberland ; Westmorland ; Lancashire.

North and South Wales, including *Chester*.

Sheriff's Duty on the Circuit.

Before the justices of assize go their circuit, they issue out their precepts directed to the sheriff, to cause the assizes to be summoned, and the persons who are obliged to attend thereon, to appear before them ; in consequence of which, he issues out his warrant directed to his bailiffs, and also to the bailiffs of liberties within his county, to summon the same, and the persons therein named, and to proclaim within every hundred the day and place the assizes are to be held ; which warrant is to contain the substance of the judge's precept, and the sheriff must cause this to be done six days at the least before the assize day.

42 Ed. 3. c. 11.
6 H. 6. c. 2.

He is also to cause twenty-four good and lawful men of the county, some out of every hundred, and which are called the grand inquest, who are gentlemen of the first figure in the county, and freeholders, but to what amount is uncertain, to attend there, to do and execute all those things which on the part of our lord the king shall be commanded them.

Also twenty-four good and lawful men who have lands and tenements in freehold to the value of 10 *l. per annum*, who are called the petit jury, and are to try prisoners upon the indictments found by the grand inquest.

5 Geo. 2. c. 25.

To give notice to all justices of peace, coroners, mayors, stewards, bailiffs of hundreds and liberties or franchises, to be there with their rolls, records, &c. To prosecutors to come and prosecute any prisoner in prison ; and also to all gaolers, to convey unto the said assize-town all prisoners committed to their charge or custody, there to receive their trials, judgment, and punishments for the

same; and for them to certify the names of all the prisoners which are in their custody for felony, &c., and by whom committed, and for what cause; what prisoners have been bailed (by the justices of the peace) after they were committed; and also to certify the several rapes and hundreds within the county, with the names of their constables, and that they severally attend in person upon the justices of assize and gaol delivery, and execute their commands in matters concerning the execution of their offices.

And that the said bailiffs summon a jury between party and party, for the trial of their cause at *nisi prius*.

After the bailiffs have executed their warrants, they are to return the same to the sheriff, in order for him to return the judge's precept, to which he annexes a calendar as follows, wrote on a piece of parchment:

———— } A calendar of the names of all the justices of
to wit, } peace of our lord the king, coroners, mayors, Names of the
justices, &c.
bailiffs of liberties, rapes and hundreds, within the county
of _____, summoned to be and appear before His Majesty's
justices assigned to take the assizes in and for the said
county, on _____ the _____ day of _____ at _____, in the
said county, and in the year of our Lord

Names of the justices of peace:

Sir A. B. baronet.—E. F. esq. &c.

Names of the coroners:

G. H.—I. K.—L. M.—O. P.

Names of the stewards or bailiffs of every liberty or franchise.

A. B. steward of the liberty of E.—C. D. bailiff of the
liberty of F.

Et sic de cæteris.

Names of the bailiffs of the hundred of O:

R. S. bailiff of the hundred of R.—T. V. bailiff of the hundred
of C.—and name the other bailiffs.

Then on a separate piece of paper put the names of the grand jury until they be sworn, and when they are sworn ingross them on parchment, and deliver the same to the clerk of the assize to be annexed to the precept, thus:

———— } The names of the grand jury to inquire for our Grand jury.
to wit, } sovereign lord the king, and the body of the
said county [here insert their names underneath, and the
hundred they live in].

Common jury.

The sheriff generally sends, three or four days before the circuit begins, to the judges of assize, the calendar of the prisoners, by what justice committed, and for what cause, what prisoners are bailed, and by whom, wrote on paper, and delivered in town; the form of which is as follows:

——— } The calendar of all the prisoners being in the
 to wit. } gaol of the said county, together with their
 attachments, indictments, and all other muniments any
 way concerning the said prisoners.

Panel of jurors
of *nisi prius*.

Warrant to
summon the
assizes.

— } J. B. esq. sheriff of the county aforesaid, to the
to wit. } bailiff of the hundred of greeting :
By virtue of the precept of esq. and
esq. justices of our said lord the king, assigned to take all
assizes, jurats, and certificates, &c. I command you, that
you do not omit, by reason of any liberty within my
bailiwick, but that you cause to come before the said
justices, at , in the county aforesaid, on the day
of next coming, all writs of assize, jurats, and
certificates, before whatsoever justices to be taken, &c. and
also, that you cause to come before His Majesty's said

justices, at the time and place aforesaid, such and so many honest and lawful men of the hundred aforesaid, whose names are hereunder written, to do those things which, on the part of our said lord the king, shall be then and there enjoined them. I command you also, that you make public proclamation in and through the whole hundred aforesaid, that all those who will prosecute against any prisoner in any prison or gaol in the county aforesaid, that they be then and there present to prosecute against them, as shall be just. And also that you give notice to all justices of the peace, chief constables, coroners, stewards, and bailiffs of liberties, within the hundred aforesaid, that they be then and there with their rolls, records, indictments, and other memorandums, to do those things which in this behalf shall belong unto them to be done. And further, by virtue of the several writs of our said lord the king to me directed, I command you, that you have before the said justices of our said lord the king, at the time and place aforesaid, the bodies of the several jurors whose names are hereunder written, to serve upon the several juries hereunder mentioned, and that yourself be there in your own person, to attend, do and perform all those things which belong to your office, and that you have then and there the names of the said justices, chief constables, coroners, stewards, bailiffs of liberties, jurors, &c. Given &c. in the year of the reign of our sovereign lord *William* the Fourth by the grace of God, of the United Kingdom of *Great Britain* and *Ireland* king, defender of the faith, and in the year of our Lord

Grand jury.	Jury between party and party.	Crown jury.
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N. B. The names are only to be inserted which each bailiff is to summon.

————— } *J. B.* esq. sheriff of the county aforesaid, to *John*
 to wit. } *Doe*, my bailiff, for this purpose only, greeting :
 By virtue of His Majesty's writ to me directed, these are to
 charge and command you, that notwithstanding any liberty
 in my county, you enter the same, and summon, distrain,
 and take the several persons hereunder named, so that they
 be and appear before the justices assigned to take the
 assizes, to be holden for my county at _____, on
 the _____ day of _____ next, to answer to His Majesty for
 several trespasses, contempts, and offences for which they
 stand indicted : And hereof fail not at your peril. Given
 under the seal of my office, this _____ day of _____
 in the year of our Lord

Precept for
the assize pro-
cess.

[Here insert the names as before.]

Precept to
summon a
special jury.

——— } *J. B.* esq. sheriff of the county aforesaid, to *W. R.*
to wit. } my bailiff, greeting : These are to will and
require you, immediately upon sight hereof, that you warn
the several persons hereunder named, so that they be and
appear before His Majesty's justices of assize at
on the day of and then and there to serve
as jurymen in a cause between plaintiff, and
 defendant. Hereof fail not at your peril.
Given under the seal of my office, this day of

By the same sheriff.

The names of the jurors.

Sir *E. H.* baronet, and all the other names.

Where there is to be a view, add the following :

And I do also hereby authorize and require you to sum-
mon the first twelve persons named herein, so that they
do appear to take a view of the place in question, on
the day of instant, and
that they meet, in order thereto, at one of the clock in the
afternoon of the same day, at the house called or known
by the name or sign of the in my
county. By the same sheriff.

The bailiffs summonses are printed.

Having now summoned the assizes, he is to make the
following returns to the several precepts :

Return to the
precept of gaol
delivery, signed
by the clerk of
assize.

The execution of this writ appears in divers panels
hereunto annexed ; and further, I have made public pro-
clamation through my whole bailiwick, that all they who
will prosecute against them, or any of them, for any thing
within contained, on the part of our lord the king, or for
themselves, that they be then and there with their bills in
form of law to prosecute. I have given notice also to all
justices of the peace, mayors, coroners, bailiffs of liberties
and hundreds, and constables of hundreds, in the county
aforesaid, that they respectively be then and there with
their rolls, records, indictments, and all other remembrances,
to do those things which to their several offices in that
behalf appertain to be done, as is within commanded. The
answer of, &c.

The execution of this writ appears in divers panels here-
unto annexed. The answer of, &c.

The within-named *A. B.* and *C. D.* are summoned by
good summoners, to wit. *E. F.* and *G. H.* [the bailiffs
names.]

{ *John Doe*
and
{ *Richard Roe.*

Return to the
precept of oyer
and terminer,
signed by judges.
Ditto of gaol
delivery signed
by judges.
Return of sum-
mons on an
indictment.

But the within-named *J. K.* and *L. M.* have nothing, nor hath either of them any thing in my bailiwick, by which they or either of them can be attached, nor are they or either of them found in the same.

Return of
nihil.

By virtue of this writ to me directed, I have taken the bodies of the within-named *A. B.* and *C. D.* whom I have before the king's justices within-named, at the day and place as within I am commanded, but the within-named *E. F.* and *G. H.* are not, nor is either of them, found in my bailiwick. The answer of, &c.

Return of
capias on indictment at assize.

The execution of this precept appears in divers panels to the same precept annexed. And further, I have made proclamation through my whole bailiwick, that all they who will prosecute against them for any thing within contained, on the part of our lord the king, or for themselves, that they be then and there with their bills in form of law to prosecute. I have also given notice to all justices of the peace, mayors, coroners, escheators, and stewards, and also to all chief constables and bailiffs of every hundred and liberty within my county, that they be then and there in their own persons, with their rolls, records, indictments, and other remembrances, to do those things, which to their offices in that behalf appertain to be done, as within I am commanded. The answer of, &c.

Return of assize
precept, signed
by the clerk of
assize

By the common law, the sheriff could return no issues upon a *ven. fa. jurator*, neither was it needful to return any great issues upon writs of *habeas corpora*; but for the more expedition of justice and speedy trial of issues, (which in former times were greatly delayed for want of compelling jurors to appear,) by the statute of 35 *H. 8.* it is enacted,

What issues
the sheriff
must return
upon *hab. corp.*
or *distringas*.

c. 6. s. 4.

“That upon every writ of *hab. corp.* or *distringas*, with
“a *nisi prius* delivered of record to the sheriff, &c. to
“whom the making of the return doth appertain, the said
“sheriff, &c. shall return issues upon every person im-
“panelled and returned upon any such writs, at the least
“5*s.*; upon an *alias* 10*s.*; *pluries*, 13*s.* 4*d.*; and double
“that sum upon every other.”

By 27 *El.*

c. 6.

“The issues upon the first *distringas* are enlarged to
“10*s.*, the second 20*s.*, and 30*s.* on the third.”

“No sheriff or other officer shall return in the king's
“courts less issues in actions of attainr than 40*s.* upon
“the first writ of distress, and 5*l.* on the second writ of
“distress, and double upon every other writ of distress,

Upon attainr.

11 H. 7. c. 21.
 23 H. 8. c. 3.
 & 13 Eliz. c. 25.
 3 Geo. 2. c. 25.
 s. 13.

“against the persons impannelled and returned to be
 “jurors in the same action, upon pain to forfeit 20*l.* to the
 “king and party grieved;” 5*l.* and not less than 40*s.* as
 the judge shall think reasonable.

Sheriff's Accounts.

THE sheriff is the king's bailiff of his county, and there were several farms of the county that were under the particular care of the sheriff; that is to say, all those farms that were held of the king as of his county, these were under the survey of the sheriff, and he was charged with them, being obliged to answer them in all events; and for them he pays in his proffers, because they were reckoned part of his bailiwick (*a*).

51 H. 3.

The sheriff is a patent-officer of the crown, and is constituted the king's bailiff to gather his rents; and therefore, after the said constitution, the first thing is to prefix him a day to account, and there were two days prefixed, one after the *utis* of *Easter*, and the other after the *utis* of *Michaelmas*; and these were called his proffers, because he then did proffer the king's rents; they gave him two times in a year, because the rents were generally payable half-yearly. It is the duty, therefore, of the sheriff, to come at the day of prefixion, and if he does not, he is considered as an accountant in default, and therefore a fine of 5*l.* *per diem* is set upon his head for four days together to bring him in; and if he do not come in at the end of the fourth day, then an attachment *fi. fac'* and *cap. in manus nomine distriction'* issues against his body, lands and goods, and these issue to the marshal of the court, in order to bring him in; but what goods are taken, or what profits of lands are seized, are forfeited to the king till he comes in to account, and do not go in discharge of his debt, but are pains to make him account, and must be compounded by the sheriff.

A sheriff ought to make his account in person, or by attorney. And his account shall be annual, and in a regular manner (*b*).

They give security to answer their proffers, and all other the profits of the sheriffwicks, before their patents are made out; but they do not sue the security unless

(*a*) Gilb E. 141.

(*b*) Mod. 658. 629.

there is a deficiency in the sheriff's effects. If the sheriff keeps his day of prefixion, he is then to pay in his proffers, and to be apposed before the barons, on the writs that issue from the king's treasurer's remembrancer to get in the king's debts; and upon the prefixion at *Michaelmas*, he is charged before the cursitor-baron on the summons of the pipe, for all the farms that belong to his county; and these were called *vicontiel* rents, or the *corp' comitat'* or the *proficua comitat'*; but the clerk, to save the expense of time and pains, instead of writing several little rents in charge, wrote a gross *de corp' comitat'* 100*l.* and *numero comitat'* 50*l.* as is hereinbefore mentioned, so that there was one sum charged upon him, and the sheriff accounted for the particular rents, that made it up, by a roll which he kept in his custody; the rents which were to be accounted *numero* were anciently reserved in fine silver, and therefore they gave so much more in tale, *viz. in Com' Bed. & Buck. 13 E. 3, nic' passe len' de 18l. 4s. 4d. numero pro 17s. 7d. Blanc*; and this negligence in the clerk was the loss of many rents to the crown; but in *Norfolk*, where the rents were greater, they wrote the particular *vicontiel* rents in charge, and so they remain on the pipe-roll to this day (c).

The sheriff pays in proffers to the value of the county rents, because these he must *tot* or *O'ni* (i. e. *Oneratur nisi habeat sufficientem exonerationem, &c.*) before the cursitor-baron, and he cannot here *nichil*, because the lands might be seized into the king's hands, and out of the profits and issues the rent might be answered, and the sheriff is looked upon to farm the rents, and therefore is obliged to pay them in to the crown, but he may *O'ni* these rents; for if the king grants any of them, he may show the record in his discharge; and all these rents being within the survey of the sheriff, he must acquit them below on receipt of the rents, for the sheriff as farmer of the county was answerable for them.

As to the sheriff's *discharge*, first he may discharge himself by an *O'ni* (i. e.) by order of court upon any particular article, or by showing the king's great or privy seal, discharging it out of the account (d).

Patents and Accompts.

BY 3 & 4 Will. 4, c. 99, so much of 3 Geo. 1, c. 15, as relates to the demanding fees by sheriffs, and the c. 16, relating to the suing out their patents and passing their accounts in the Exchequer, are repealed; and it is thereby provided, that it shall be no longer necessary to sue out any patent or writ of assistance, or to make or pay proffers, nor have any day of prefixion, or be apposed or take any oath before the cursitor baron to account or be cast out of court; but upon any person being duly nominated or pricked to be sheriff of any county in *England* or *Wales* (except *Lancaster*) the same is to be notified in the Gazette, and a warrant,

(c) Hale, 29. 118.

(d) Ib. 151.

signed by the clerk of the Privy Council and transmitted to the person so nominated, and he shall, upon taking the oath of office there mentioned, have and exercise all the usual powers of sheriffs, s. 1, 2, 3.

A duplicate of the warrant to be enrolled by the clerk of the peace within 10 days after the date, s. 4.

The sheriff, within one calendar month after his appointment notified, to appoint an under-sheriff, and transmit a duplicate to the clerk of the peace, to be by him filed; such appointment not to be stamped, and the clerk of the peace to be entitled to 5s. from such under-sheriff for filing the same, s. 5.

Sheriff and under-sheriff (except for *London* and *Middlesex*) before entering on the execution of his office, to take the oath of office, and a copy thereof, signed, shall be also transmitted to and filed by the clerk of the peace, for which he shall be entitled to 5s. from such sheriff and under-sheriff, s. 6.

Every sheriff to make out and deliver a list of all prisoners and all writs in his hands to the new sheriff, and turn over and transfer all such prisoners, &c., and all records, &c., and the new sheriff shall sign a duplicate list of all prisoners, &c. so transferred, and he shall thereupon stand and be charged therewith as fully as if the same had been turned over by indenture and schedule, to be liable, in case of refusal or neglect to turn over and transfer as aforesaid, satisfaction or damage to the party aggrieved, s. 7.

Accounts of sheriffs (except of *Chester* (a), *Lancaster* and *Durham*) to be audited by the commissioners for auditing public accounts, under 25 *G.* 3, c. 52; 46 *G.* 3, c. 141, and 1 & 2 *G.* 4, c. 121, the powers of which are declared applicable to the examination of sheriffs' accounts, s. 8.

Such sheriffs, on going out of office, within two months to transmit under their hand a true account of all sums received to the use of His Majesty, and of all claims made by them (except the allowances called the bill of cravings), but the representatives of a deceased sheriff, and not the under-sheriff, to be personally responsible for sums received by such deceased sheriff: the sheriff of *Westmorland* to transmit like accounts to the said commissioners within two months after 1 January in every year, s. 9.

Affidavits as to such account may be taken before any judge, commissioner or justice, s. 10.

The claim, called the bill of cravings, to be preferred to and settled by the Treasury, s. 11.

(a) By 11 *G.* 4 & 1 *W.* 4, c. 70, s. 33, the clerk of assize for *Chester* and each county in *Wales* is, within 10 days after the conclusion of the assizes, to make out a list of all persons liable to payment of fines, &c., and transmit the same with an order, signed by one of the judges of assize, directing him to levy the same, and for which he is to account as heretofore.

Quit and *viscontiel* rents after 10 October 1833, not to be received by and chargeable to sheriffs, but to be considered as part of the land revenue of the Crown, s. 12.

And which may be remitted and discharged by the Treasury, s. 13.

So much of 32 G. 2, c. 14, as relates to the post-fines payable on producing his *quietus*, and to lords of liberties, repealed, s. 14.

And in future sheriffs not to receive or be chargeable with pre-fines or post-fines, but the same to be received by the receiver-general of alienation fines, s. 15; *Lancaster* excepted, s. 16.

“The sheriffs of *Wales* shall not be compelled to appear to be apposed in the Exchequer, but shall be apposed before His Majesty’s auditor in *Wales*; and the *quietus* of the said sheriffs under the auditor’s hand shall be a sufficient discharge.”

Sheriffs of *Wales* to account before the auditor.

1 G. 1. c. V. 15. s. 24.

“The auditors of *Chester*, *Lancaster* and *Durham* shall state the accounts of the sheriffs of the said counties, and appose them touching the execution of the king’s process; and the said sheriffs, on such accounts, may sue forth their *quietus est* from the said auditors, according to the ancient usage.”

Counties palatine. s. 25.

“The sheriff of the city of *Chester* shall account as formerly before the mayor, touching all matters granted from the crown to the city by charter.”

City of *Chester*. s. 26.

“The sheriffs of the city of *Chester*, as for all other matters not granted to the city, and for which the sheriffs are accountable to His Majesty, shall account for the same before, and be apposed by, and obtain their *quietus est* from the auditor of the county of *Chester*, in the same manner as the sheriffs of the county of *Chester*.”

Sheriffs of the city of *Chester* to account before the auditor of the county. s. 27.

Quietus.

BY 3 G. 1. it is enacted,

c. 16. s. 1.

That the yearly sum of 4,000*l.* shall be set apart at the receipt of the Exchequer out of such fund as by any act of this session of parliament shall be charged with the said yearly sum, and in such manner as shall be thereby appointed for the uses and purposes hereafter mentioned.

Yearly sum set apart for the purposes after mentioned.

That there shall be yearly paid out of the monies which shall be so set apart, upon the *first* day of *Michaelmas* term, to the several sheriffs for the time being, of the several counties hereinafter mentioned, the several and respective sums after expressed, to enable them respectively to bear the expenses of the respective letters patent for their offices, and to pass their respective accounts, and to obtain their respective *quietuses*; the said yearly sums to be received without any accompt or imprest whatsoever to be set upon them, or any of them, and without paying any fees or charges for the same, or any part thereof; that is to say,

Yearly allowance to sheriffs of different counties.

To the Sheriff of

	£.	s.		£.	s.		£.	s.
Bedford - -	93	6	Lincoln - -	101	3	Warwick - -	93	10
Berks - -	96	-	Middlesex -	119	3	Wilts - -	104	10
Bucks - -	96	-	Monmouth -	89	3	Worcester -	98	3
Cambridge & } Huntingdon }	95	10	Norfolk - -	101	15	York - -	150	-
Cheshire - -	62	10	Northampton	96	-	Anglesey - -	30	-
Cornwall - -	102	16	Northumber- } land - - }	91	-	Brecon - -	30	-
Cumberland	90	2	Nottingham -	95	13	Cardigan - -	30	-
Devon - -	106	9	Oxon - -	97	7	Carmarthen -	30	-
Dorset - -	101	6	Rutland - -	69	11	Denbigh - -	30	-
Essex - -	108	10	Salop - -	98	3	Flint - -	30	-
Gloucester -	98	10	Somerset - -	112	19	Glamorgan -	30	-
Hertford - -	94	6	Southampton	101	3	Merioneth -	30	-
Hertford - -	93	-	Stafford - -	95	10	Montgomery	30	-
Kent - -	108	10	Suffolk - -	102	12	Pembroke - -	30	-
Lancaster - -	67	7	Surrey - -	90	2	Radnor - -	30	-
Leicester - -	94	6	Sussex - -	90	5	Westmorland	40	6
						Derby - -	93	19

A *quietus* to be a sufficient discharge to the sheriff, if not questioned within four years.

"When any sheriff, &c. within *England* or *Wales*, upon passing their accounts, shall have their *quietus*, then such sheriff and sheriffs, their heirs, executors, &c. lands, tenements, goods and chattels, shall be thereby absolutely discharged of all manner of sums of money by them levied and received, notwithstanding any such pretence that the same were not accounted for, or other pretence whatsoever, unless such sheriff be called in question, and judgment given against him or them for the same within four years after such account or *quietus est*; and every officer or minister by whom or by whose default any process shall be sent out contrary to the statute 21 *Jac.* 1. c. 5, shall forfeit 40*l.* to the party grieved, with costs, to be recovered by action of debt," &c.

Fees of Office taken in London and Middlesex.

Sheriffs of London and Middlesex being at great expenses in passing their office, their under-sheriff of Middlesex, out of fees, to advance all rewards, &c.

THE sheriff of *Middlesex*, who are also sheriffs of *London*, is nominated by the citizens thereof, and are, as sheriffs of *London*, at much greater expense in passing through their office than the sheriff of any other county in *England*; and therefore oblige their under-sheriff of *Middlesex*, out of the fees and profits arising from that office, to advance money from time to time to pay all rewards payable by the said sheriff for apprehending highwaymen and other malefactors, which are given by several acts of parliament, and to pay the wages of the justices of peace attending at the several sessions of the peace for the said county of *Middlesex*, and to bear part of the expenses of the entertainments at the sessions of gaol delivery, held in the *Old Bailey, London*, for the county of *Middlesex*, which, together with other charges incident to the said office, amount annually to the sum of 450*l.* For the dispatch of the business of the county, he keeps his office in *Red Lion Square, Holborn*, wherein, besides his own attendance, three clerks are daily employed, (*Sundays* and holidays excepted); they have no

salary nor wages, but the allowance out of the fees. And in consideration of his giving security to the said sheriff in the sum of 12,000*l.* to indemnify him from all damages and losses that may happen from the mistake, omission or misdemeanor of him, his deputies, clerks or bailiffs, the sheriff hath granted to him all lawful fees, profits and perquisites belonging to the said office.

In consideration all fees granted to the under-sheriff.

CUSTOMS AND EXCISE.

THE duty of the sheriff in respect of the customs and excise depend altogether upon statutory enactments.

By 9 *Geo. 2. c. 35*,

Where any writ of *capias* shall issue out of any court, directed to any sheriff, mayor, &c. having the execution of any process in any county, city or liberty, against any person who shall be guilty of or prosecuted for any offence whatsoever, contrary to any of the laws or statutes now in being, relating to His Majesty's revenues of customs or excise, every such sheriff, mayor, &c. having execution of process, and their under-sheriffs, &c. and other persons acting for them in the said office, shall, upon request of any one of the known solicitors for the customs or excise, (such request to be in writing indorsed upon the back of the said process, and signed by such solicitor, with his name and addition of solicitor of the customs or excise, as the case shall happen to be,) grant a special warrant or warrants to such person or persons as shall be named to them by such solicitor, for the apprehending such offender and offenders; or in default thereof, every such sheriff, mayor, &c. shall be liable to such process of contempt, fines, amerciaments, penalties and forfeitures as they or any of them are now by any law, custom or usage liable to in case of refusing or neglecting to execute the like process, where the defendant might have been taken thereupon in the common and usual method of proceeding.

9 *G. 2. c. 35*.

Sheriffs, mayor, &c. on request of solicitor for the customs or excise, to grant a special warrant for apprehending offenders, on writs of *capias*, &c.

That every sheriff, mayor, &c. shall be, and they are hereby saved harmless and indemnified against His Majesty, and against all and every other person and persons whatsoever, of and from all escapes of any person or persons who shall or may be taken by virtue of any such warrants as aforesaid, which shall or may happen from the time of the taking such offender or offenders, till he, she or they shall be committed to the proper gaol or prison, or offered or rendered to the gaol-keeper, or other person having charge of such gaol or prison, (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and give a receipt for his and their

Sheriffs, mayors, &c. granting such special warrants, saved harmless.
s. 33.

body and bodies,) and of and from all actions, prosecutions, process of contempt, and other proceedings whatsoever, for or by reason of any such escape.

And by the 7 *Geo.* 3, it is enacted,

c. 29.

Poundage.
Cases where
sheriffs, &c. are
declared not en-
titled to pound-
age, by virtue
of 29 *El.* c. 4.

That the 29 *El.* c. 4, with respect to poundage on executions, shall not extend to allow any sheriff, employed in the execution of process, any poundage for taking the body of any person in execution upon any process at the suit of any sheriff, or other officer or minister of the crown, upon any bail-bond entered into for the appearance of any person prosecuted, either for any duties due or payable to His Majesty, or for any penalty inflicted by any act of parliament, made or to be made for the preventing the clandestine running or receiving any customable or prohibited goods, or in any case whatsoever, where the sheriff or officer executing such process would not be entitled to poundage, if the proceedings were or had been carried on directly in the name of the crown.

For cases on this clause, *Vide* title *Poundage, infra*.

False Return of Writ.

False return.

IF the sheriff does not execute a writ delivered to him, or if he wilfully make a false return thereof, in both these cases the party aggrieved shall have an action on the case for damages, to be assessed by a jury (*a*).

Case lies for
a false return.

For a false return an action upon the case lies against a sheriff by the common law (*b*).

So if a mayor or bailiff make a false return to any writ, an action on the case will lie against them.

If return *cepi*
corpus or *lan-*
guidus, and de-
fendant at large,
liable to this
action.

If the sheriff returns a *cepi corpus*, and *paratum habeo* or *languidus*, where the defendant is at large, without any bail taken, he is not aided by the statute, but an action lies against him for a false return (*c*).

If matter false.

If the return upon the face of it be good, but the matter of it false, an action upon the case lies for the party injured, against the person making such false return. And where the return is made by several, the action may be either joint or several, it being founded upon a tort (*d*).

The truth of a
return not to be
tried on motion.

The court will not try the truth of a return on a motion to set aside proceedings, but will leave the party to his action (*e*).

When action
lies for a false
return.

If the sheriff returns *non est inventus*, where he has or might have taken the body, he is liable to an action for

(*a*) *Moor*, 431. 11 *Rep.* 99.

(*d*) *Carth.* 171. *Bull. N. P.*

(*b*) 2 *Inst.* 452. 4 *Mod.* 401.

198.

(*c*) 1 *Roll. Abr.* 807.

(*e*) *Barr v. Satchwell*, 2 *Str.* 813.

a false return (*f*); and he is liable to a similar action, if he return *cepi corpus et paratum habeo*, where he has taken the defendant, and let him go at large without bail; he is liable to an action, if the defendant be not in custody, or bail above be not put in and perfected, or surrender made in due time (*g*). But when the sheriff has taken a bail-bond, he is not liable to this action upon the return of *cepi corpus et paratum habeo* (*h*).

When not.

It appears that this action is given to the plaintiff by the 28 *E. 1*, c. 16, enacting,

This action is given by
23 *Ed. 1*, c. 16.

That if any sheriff shall make a false return of any writ, (whereby right is deferred,) the offenders shall yield damages to the party grieved.

And if the sheriff return *mandavi ballivo libertatis*, where there is no liberty, an action lies; and so if he return too small issues (*i*).

If he return
mand. ball. lib.
and no liberty.

The writ was delivered to the under-sheriff by the plaintiff, his creditor being then and there present, and in the sight and company of the high sheriff, and yet he, and not the under-sheriff, returned *non est inventus*; and thereupon the action was brought against him, and held good. For he is the proper officer to the court, and not the under-sheriff; and every neglect or fraud of the under-sheriff, in executing the office, is punishable against the high sheriff by fine, &c. but he is not to be committed for the act of his under-sheriff (*k*).

Writ delivered to under-sheriff in company of high sheriff, sheriff returned not found, action brought against him.

Upon writ to the sheriff, he first made warrant to the bailiff of the liberty, and after to his own bailiff, who arrested the party, and suffered him to escape; and then the sheriff returned *mandavi ballivo*. Upon affidavit of the fact, the sheriff was ordered to attend. And it was agreed, that an action lay against the sheriff for a false return (*l*).

Warrant to bailiff, and after warrant to sheriff's bailiff, then return of *mand. ball.* action lies.

If the sheriff will return *liberavi parte*, where he refuses to accept, action will lie against him for a false return (*m*).

Sheriff returns
liberavi parte.

The writ of *capias* in *withernam* is no writ of execution; and he can have no action for a false return against the sheriff; 1st, because the *elongat.* is grounded upon an inquisition; 2dly, if he cannot replevy the party, he can

Capias in
withern. no
execution.

(*f*) 2 *Esp.* 176.

(*k*) 3 *Nels. Abr.* 237, 238, pl. 6.

(*g*) *Gilb. C. P.* 22. 2 *Mod.* 1 *Mod.* 33, 57, 58.

178. (*l*) *Steward v. Floyd*, 12 *Mod.*

(*h*) 3 *Salk.* 314.

311.

(*i*) *Kitch. Ret.* 19 *H 6*, fol. 8.

(*m*) 12 *Mod.* 361.

make no other return: for he is not to take him to falsify the writ (*n*).

No action lies for return of *elongat*, where the sheriff cannot have sight of the thing.

No action for a false return will lie against the sheriff for returning an *elongat*, in any case where he cannot have sight of the thing to be replevied, because he can make no other return; but if such an action could, the taking an inquisition would not have prevented it; for it is not a sheriff's taking an inquisition, where it does not lie, will protect him from an action (*o*).

If sheriff put in bail before expiration of rule to bring in body, it is sufficient.

If a sheriff, after having arrested a party, suffer him to go at large without taking a bail-bond, and return *cepi corpus*, and before the expiration of the rule to bring in the body put in bail, it is decided, that the sheriff is not liable to an action for a false return, or for an escape (*p*).

On arrest sheriff took bail and returned *cepi*; and return was good.

Upon an arrest, sheriff took bail and returned *cepi corpus*, plaintiff brought an action for a false return, but adjudged a good return, because, by 23 H. 6, he is compelled to take bail, and the statute has made no alteration of the return (*q*).

Case lies for making other return than that received.

An action on the case lies against a sheriff for making other return than is returned to him by a liberty or bailiff of a franchise, who had *retorna brevium* (*r*).

On returning bailiff's answer, if untrue, action against bailiff.

And if a sheriff returns the bailiff's answer, and it is untrue, an action lies against the bailiff, and not against the sheriff. For the sheriff ought to accept the return of the bailiff, and not examine the reality of it (if it be sufficient in law (*s*)).

The sheriff is bound to execute the process of the law in the most effectual way; if a person against whom a party had a writ, did not abscond, but continued in the daily exercise of his usual occupation, appearing publicly as usual, was visible to every person that came to him about business, and the bailiff neglected to arrest him, and returned *non est inventus*, such was unquestionably a false return (*t*).

The declaration

In an action for a false return the declaration should state, that plaintiff had good cause of action against the defendant in the original action, by stating that he was indebted to him for money lent, &c. and he is bound to prove such statement (*u*).

- | | |
|--|---|
| (<i>n</i>) Moore v. Watts, 12 Mod. 444. | (<i>r</i>) 1 Roll. Rep. 119. |
| (<i>o</i>) Moore v. Watts, 12 Mod. 426. | (<i>s</i>) 1 Roll. Ab. 98, 99. Cro. El. |
| 2 Salk. 581. | 512. |
| (<i>p</i>) 2 B. & P. 35. | (<i>t</i>) 2 Esp. 476. |
| (<i>q</i>) Williams v. Tempest, 2 Sid. 28. | (<i>u</i>) Ib. |

If the sheriff levy the *whole* on a *fi. fa.* and only return *part* levied, this action lies for a *false return* (*w*).

If sheriff levy the whole and return part.
Venue.

The venue is to be laid where the return is filed in *Middlesex*, or in the county where it was made (*x*).

Where the sheriff returns *nulla bona*, and there is a recovery against him for his false return, that vests no property of the goods in him, but they remain in the party, and are liable to any subsequent execution for his debt (*y*).

If recovery for a false return, the goods remain in the party.

If the plaintiff, relying on the statement of the sheriff that there is rent and taxes more than the amount of the levy, afterwards take the plaintiff on a *ca. sa.*, he cannot sue for a false return, although the claim for rent should turn out to be unfounded (*z*).

In an action for a false return of *nulla bona*, held that the person claiming property in the goods was an admissible witness for the sheriff to prove that they were not the property of the debtor (*a*).

False Imprisonment.

IF a man be arrested under a process which was irregularly issued, this is a false imprisonment in the party at whose suit it was issued; for it was incumbent on him to take care that the process was regularly issued (*b*).

If arrest be by an irregular process.

But if a man be arrested under a process which was erroneously issued, this is *not* a false imprisonment; because the issuing thereof was owing to the mistake of an officer of the court, and not to the fault or neglect of the party at whose suit it was issued (*c*).

But if erroneously issued out.

The officer is not in this case liable to an action of trespass; for that it would be hard to punish a man who has done nothing more than obey the process of a court to which he owed obedience (*d*).

Officer not liable through irregular process.

The sheriff is not discharged from the action of a false return by the plaintiff afterwards taking the defendant on a *ca. sa.* (*e*).

If a sheriff to whom no writ has been directed for the arresting of *A.*, make out a warrant to a bailiff to arrest

If sheriff make warrant without

(*w*) Salk. 12.

(*x*) Bull. N. P. 64.

(*y*) 2 Vern. 239.

(*z*) Stewart v. Whittaker, 1 Ry. & M. N. P. 310.

(*a*) Thomas v. Pearse, 5 Pri. 547.

(*b*) 2 Jon. 214. 1 Ventr. 220. Str. 509.

(*c*) Philips v. Biron, Str. 509.

(*d*) Cro. Jac. 3. 2 Leon. 89. 4 Leon. 78. 2 Mod. 196. Str. 509.

(*e*) Wordal v. Smith, 1 Camp. 332.

writ, false imprisonment.

A., and *A.* be thereupon arrested, it is a false imprisonment in the sheriff and the bailiff, because there is no authority for the arrest (*f*).

But if a writ is directed, and *A.* is arrested before writ delivered, no false imprisonment.

But if a writ has been directed to a sheriff for the arresting of *A.*, and he makes out a warrant to a bailiff, under which *A.* is arrested before the writ is delivered to the sheriff, that is no false imprisonment; for the writ is in this case an authority for all that has been done, notwithstanding it was *not* delivered to the sheriff before the arrest (*g*).

But warrant not lawful.

Although, however, the arrest upon such warrant is good, the granting thereof by a sheriff or his deputy is not lawful (*h*).

An action lies for an arrest made by bailiff after the return of the writ.

The sheriff is liable for the misconduct of his officers, while acting under colour of an authority derived under him; and therefore he is liable to this action for an arrest made by his bailiff after the return of the writ; and so is the gaoler who receives the defendant.

The true ground upon which the sheriff is held to be liable is, that he is thought to commit the execution of the writ to another person; and if he has not executed it properly, the sheriff is liable. The officer is the servant of the sheriff, and executing the process directed to him; if therefore he acts irregularly, the law subjects the sheriff, from whom he derives that authority. The gaoler is the officer of the sheriff, and therefore the sheriff is liable for his acts. *Eyre, C. J. (i).*

If *A.* arrested instead of *B.* false imprisonment.

If *A.* be arrested instead of *B.* whom the sheriff had a writ to arrest, this, although *B.* be very much like *A.* in the face, is a false imprisonment; for the sheriff is at his peril to take care that he do not arrest any person except him against whom the writ issued (*k*).

If *A.* tell an officer that his name is *B.* and is arrested, yet false imprisonment.

Nay it has been holden, that if *A.* tell an officer, who has a warrant to arrest *B.*, that his name is *B.*, and thereupon the officer arrest *A.*, this is false imprisonment; for the sheriff is at his peril to take care that he do not arrest any person except him against whom the writ issued (*l*); yet it seems he caused himself to be arrested, therefore *quære* as to damages.

(*f*) 1 Jones, 375.

(*g*) 2 Lev. 19. 3 Lev. 93.

(*h*) 2 Wils. 47.

(*i*) Parrott v. Mumford, 2 Esp. 585.

(*k*) Bro. Off. pl. 8. 2 Roll. Abr. 552. O. pl. 5. 1 Bulst. 149.

(*l*) Moor, 457. Hardr. 323.

And it appears that if there be a misnomer in the process, and sheriff arrest the defendant by such wrong name, he cannot justify himself in an action of trespass for the false imprisonment (*m*). And so if goods be taken under a *fi. fa.* wherein defendant is misnamed (*n*).

If defendant misnamed.

Misnomer of the christian name of one of defendants in a *latitat* is bad (*o*). So misnomer of defendant's christian name in the notice at the bottom of process (*p*).

If a *special bailiff* do not show his warrant, a sight thereof being demanded at the time of arresting a man, the arrest is a false imprisonment (*q*). But it is otherwise if arrested by a known bailiff.

If warrant not shown, false imprisonment.

But if a warrant be directed to two or more jointly or severally, an arrest by any one of these is certainly not a false imprisonment (*r*).

If warrant to two, and arrest by one.

If a stranger assist a bailiff in confining a person who has been arrested by the bailiff, this is not a false imprisonment. And if a stranger, after a man has been arrested, confine him at the request of the bailiff who arrested him, this is not a false imprisonment (*s*).

If a stranger assist officer.

If stranger confine after arrest made.

If a person against whom an escape-warrant has issued be arrested by the mob, and by them delivered to the sheriff, and the sheriff detain him, this is a false imprisonment; for, as he was not arrested by a proper officer, the arrest was illegal (*t*).

If on escape-warrant he be arrested by the mob, false imprisonment.

An unlawful detaining of a man does, although the first arrest was lawful, amount to a new arrest, and consequently is a false imprisonment (*u*); nor can he detain a party for the costs of the attorney after the plaintiff is satisfied (*x*).

Unlawful detainer, although arrest lawful.

If a plaintiff, by an order in writing, direct a sheriff to discharge a man whom he has arrested by virtue of a *capias* or an *exigent* at the suit of the plaintiff, and the sheriff do afterwards detain the man, this is a false imprisonment (*y*). So after a *supersedeas* delivered to him, and party not discharged (*z*).

Sheriff must discharge a man, if directed by plaintiff.

So after *supersedeas*.

(*m*) 8 East, 328.

(*n*) 6 T. R. 234.

(*o*) Tomlin v. Preston, 1 Ch. 397.

(*p*) Harden v. Wood, 1 Ch. 500.

(*q*) Bro. Faux. Impr. pl. 23. 9 Rep. 69.

(*r*) 1 Inst. 181.

(*s*) Bro. Tres. pl. 402. 2 Roll. Abr. 561. F. pl. 2. Cro. Car. 446.

(*t*) Rich v. Doughty, 6 Mod. 154.

(*u*) Cro. Car. 379.

(*x*) Martin v. Francis, 2 B. & Ald. 402.

(*y*) Withers v. Henley, Cro. Car. 379. 3 Bulstr. 97, 98.

(*z*) Fitz. N. B. 236. Cro. Jac.

379. 1 Roll. Rep. 141. 3 Bulstr.

Confining in a gaol contra order, false imprisonment.

If a name of a bailiff be inserted in the warrant, it is bad.

Will not lie for an arrest of the person, though protected as a suitor.

Action will not lie for arresting a bankrupt, &c.

Sheriff must show process, if he justify under it; a party need not.

If the order of a court be to carry a man to a certain prison, the confining him in any other place is a false imprisonment (*a*).

If a warrant on a *capias* has *two* bailiffs' names inserted by the under-sheriff, and a blank left for a third, is sealed, and sent to plaintiff's attorney, who inserts *another* bailiff's name in the blank of it, it is bad, and false imprisonment lies against the bailiff who makes the arrest (*b*).

This action will not lie for a person arrested by legal process, though he be returning from the court of Common Pleas, where he had been attending his own cause; for the process is not void (*c*).

It will not lie against the sheriff or his officer for arresting a certificated bankrupt, a peer, a discharged insolvent, or a person who took the advantage of the statute of 20 *Geo. 3. c. 64* (*d*).

If the sheriff or officer to whom *mesne* process is directed, justify an imprisonment under the process, he must show it to be returned; but a party who has a warrant from the sheriff, or one in aid of him, need not (*e*).

Trespass.

THE high-sheriff is answerable in damages for the trespasses committed by his officer in the execution of warrants; the law looking upon the sheriff and all his officers as one person, he is to look to his officers, that they do their duty; for if they transgress, he is answerable to the party injured by such transgression, and his officers are answerable over to him (*f*).

But where the plaintiff employed an auctioneer to sell goods taken in execution, and afterwards a stranger, whose the property was, obtained a verdict against the sheriff, bailiff and auctioneer: held, that the latter could not maintain any action against the sheriff for a contribution, or upon an implied indemnity, although he had received his poundage (*g*).

(*a*) *Swynstead v. Lyddal*, Salk. 408. Skin. 664.

(*b*) *Burslem v. Fern*, 2 Wils. 47.

(*c*) *Cameron v. Lightfoot*, 2 Bl. R. 317.

(*d*) *Tarleton v. Fisher*, Doug. 671.

(*e*) 1 Salk. 409. 12 Mod. 396. Com. Dig. Pleader, 3 M. 24. 6

T. R. 235.

(*f*) *Saunderson v. Baker*, 2 Bl. R. 317. 2 Keb. 342.

(*g*) *Farebrother v. Ansley*, 1 Camp. 343.

Trespass will lie against the sheriff if his officer take the goods of *A.* on a *fi. fa.* against those of *B.* (*h*).

If goods of *A.* taken instead of *B.*, trespass lies.

If the bailiff of a franchise take the goods of a stranger in execution, trespass lies against him, and not the sheriff (*i*).

If goods of a stranger taken, trespass lies.

If sheriff takes a furnace, &c. fixed to a freehold, trespass lies, but not against the party, though it is delivered to him (*k*).

If sheriff takes a furnace.

If a sheriff who comes to replevy the beast of *J. S.* which is impounded in the close of *J. N.*, break down the fences of the close, and enter that way, when he might have went through the gate, trespass lies. But if by reason of the threat of *J. N.* the sheriff fear his life will be in danger if he go through the gate, and in consequence of this he break down the fence of the close, and enter that way, this action does not lie (*l*).

If fences broken where there is a gate, trespass lies.

But if threats are used against sheriff, otherwise.

On foreign attachment of the goods, the officer cannot legally continue in possession of the defendant's house, or keep the goods therein for a long and unreasonable time; but must remove them to a place of safe custody, else he is a trespasser *ab initio* (*m*).

Officer not to keep the goods an unreasonable time.

In all cases where the execution of a judgment on which the demand is of a thing certain, if the sheriff do this thing he is not any disseisor. But where the execution is in the generality, without mentioning of any thing in particular, there the sheriff ought to make execution of the right thing at his own peril, otherwise he shall be a disseisor; for he was bound to take notice of it, and he had not any warrant from the court to make execution of any but the right thing (*n*).

Execution of the right thing at peril of the sheriff.

Where the subject-matter of any suit is not *within* the jurisdiction of the court applied to for redress, every thing done is absolutely *void*, and the officer executing the process is a trespasser (*o*).

When officer a trespasser.

But where the subject-matter *is within* the jurisdiction of the court, but the *want of jurisdiction is to the person or place*, unless the want of jurisdiction appears in the

When not

(*h*) Ackworth v. Kempe, Dougl. 40. 2 Bl. R. 32. S. P. and see 1 East, 328.

(*l*) 2 Roll. Abr. 552.

(*m*) Read v. Harrison, 2 Bl. R. 1218.

(*i*) 2 Roll. 522. l. 40.

(*n*) Floyd v. Bethel, Roll. R. 200. 2 Vin. 292.

(*k*) 2 Roll. 556. l. 50. Cro. El. 374.

(*o*) Hard. 480.

process to the officer who executes it, he is *not* a trespasser (*p*).

If sheriff break the house to execute process.

If the sheriff or his officers break the house of any person to execute process of *fi. fa.* against the goods, or *capias* against the person, at the suit of the subject, he is a trespasser, and liable to this action. But this privilege only is confined to the person or goods of the owner of the house, or such as are brought there without fraud or covin, and therefore shall not protect the person or goods of any other which are brought there to prevent a lawful execution (*q*).

Only confined to the person of the owner or his goods.

If a sheriff take goods under a *fi. fa.* and they be forcibly taken away from him, the sheriff may maintain trespass, although he has only a special property in them (*r*); or trover.

When sheriff may maintain this action.

When officers not trespassers.

Officers doing their duty shall not be trespassers by relation if the first taking were lawful (*s*); and so long as the judgment exists it protects the sheriff, and all acting under him (*t*).

When may waive trespass, and bring action for the goods sold.

In case goods be taken in execution, which are not the property of the persons against whom an execution is taken out, the owner may waive the trespass, and bring his action for the amount of the money the goods sold for (*u*).

Bailiffs may justify under legal process.

In trespass against bailiffs for taking goods, they may justify under a sufficient legal process, if they had it in fact at the time, although they declared then that they entered for another cause (*x*).

Ready furnished house.

The landlord of a ready-furnished house brought trespass against the sheriff for seizing the furniture under an execution against the tenant; the court held the action *not* to be maintainable (*y*).

Justification.

In trespass against the sheriff, it is a sufficient justification for him that he shows his writ, without showing a judgment: so it is in case of his bailiff, with this difference, that the sheriff must show the writ was returned,

(*p*) 2 Co. 76. a.

(*u*) Feltham v. Terry, Cowp. 419.

(*q*) Semayne's case, 5 Co. 91.

(*x*) Crowther v. Ramshottom, 7

(*r*) Tyrrell v. Bash, Cro. El. 639.

T. R. 664. 12 Mod. 386. S. P.

1 Lev. 639.

(*y*) 4 T. R. 489. Ward v. Ma-

(*s*) Smith v. Miles, 1 T. R. 480.

cauley, 7 T. R. 9, as to trover.

(*t*) Ives v. Lucas, 1 Carr. N. P. 17.

if returnable ; but the bailiff need not, because it is not in his power (*z*).

If one comes in aid of an officer at his request, he may justify as the officer may do ; but such request or command is traversable (*a*).

Evidence.

In actions against the sheriff or his officers for tortiously taking of goods in execution, where the plaintiff is defendant in the original action, a copy of the judgment need not be given in evidence (*b*). Torts.

But where the action is by a *stranger*, whose goods have been wrongfully taken by the sheriff, under a *fi. fa.* or other execution, if sued against another person, the sheriff or his officers, in justifying under the writ, is obliged to produce a copy of the judgment upon which the *fi. fa.* issued (*c*). If by a stranger.

Trover.

THIS action is maintainable by the assignees of a bankrupt against a sheriff, who sells the goods of a bankrupt (before taken by him in execution under a *fi. fa.*) after assignment. For after the assignment they became the property of the assignees from the time of the bankruptcy by relation. But this relation shall not make him a trespasser or wrong-doer, where the *original* taking of the goods was prior to the assignment, and *lawful*. For in this action the plaintiff waives the trespass ; and relies upon the unlawful possession. The injury complained of by this action is not the seizure, but the wrongful conversion. Therefore, where the sheriff, on the 5th *December* 1753, took the goods in execution of one *Johns*, and *Johns* having committed an act of bankruptcy on the 4th, and on the 8th a commission issued, and an assignment was executed on the same day by the commissioners, and afterward, *viz.* the 28th of *December* following, the sheriff made a bill of sale of the goods, it was held, that the property vested in the assignees, from the time of the bankruptcy, by relation (*d*). Trover.

Trover and *not* trespass lies by the assignees of a bankrupt against a sheriff, for taking the goods of the bankrupt in execution after an act of bankruptcy, though When trover and not trespass.

(*z*) Salk. 408. Britton v. Cole, (*c*) Martin v. Podger, 5 Burr. 2631.

(*a*) Salk. 409.

(*d*) Cooper v. Chitty, 1 Burr. 20.

(*b*) Lake v. Billets, L. Raym. 733.

before the issuing of the commission, where he sells them after the issuing of the commission, &c., and has notice from the provisional assignee not to sell (*e*). *Aliter* if he has not sold (*f*).

When maintainable by the sheriff.

Where the goods are seized by the sheriff under a *fi. fa.* the sheriff may maintain this action against any person for taking and converting them to his own use (*g*).

When sheriff not liable to this action, as to goods leased, as furniture, by the landlord.

Where goods leased, as furniture with a house, have been wrongfully taken in execution by the sheriff, the landlord cannot maintain trover against the sheriff pending the lease, because, to maintain such an action, he must have the right of possession, as well as the right of property at the time (*h*).

As to other Actions.

If *fieri feci* be returned, the plaintiff may proceed by action of debt founded on his return; or though no return be made, an action of debt, account or assumpsit will still lie against the sheriff or his executors for the money levied (*i*).

And the defendant cannot in such an action plead the statute of limitations; for though, till the writ be returned, it is not a matter of record, yet it is founded upon a record.

Return of Writs.

Return of writs belongs to the sheriff.

THE return of all writs and process belongs to the sheriff within his county. And the king cannot grant to any other to have *retorna brevium* in a county (*k*).

Subsequent sheriff.

A subsequent sheriff may make a return of a writ delivered to his predecessor, for it is not directed to any one by name (*l*).

The *return* of a sheriff is of such high regard, that generally no averment shall be admitted against it (*m*).

But where a man's life or inheritance is in jeopardy, an averment shall be allowed against the return. As if *A.* be outlawed for felony, he may say that he tendered surety before the fifth county-court (*n*).

(*e*) *Smith v. Milles*, 1 T. R. 475.

(*i*) *Cro. Car.* 539. 2 *Show.* 79.

(*f*) *Duffill v. Spottiswoode*, 3 281. *Gilb. Exec.* 25.

Carr. & P. 437.

(*k*) *Skin.* 414. 2 *Inst.* 452. 1

(*g*) *Wilbraham v. Snow*, 1 *Lev.* 282.

Vent. 406.

(*l*) 1 *Salk.* 266.

(*h*) *Gordon v. Harper*, 7 T. R. 9.

(*m*) *Kitch.* 280.

4 T. R. 489, as to trespass.

(*n*) 2 *Roll.* 462. l. 15.

And if the king grants the return of writs in such a precinct to another, the sheriff remains officer to the court, and the grantee is but a bailiff of a franchise, and ought to make return to the sheriff. But by prescription, or the king's grant, a hundred or franchise may have *retorna brevium* within their precinct (*o*). So a bishop (*p*). So an honor, or the lord of a manor (*q*).

A grantee of *retorna brevium* shall have the execution thereof as incident, though it be not expressed (*r*).

The return of a writ ought to be made before or upon the day of return named in the writ (*s*).

If it be returnable at a return-day, not certain, the sheriff need not return it till the *quarto post* (*t*).

But where the writ expires in vacation, the sheriff need not return it till the first day of the ensuing term, and has the whole of that day to file it in (*u*).

All processes against any person, directed to the sheriff, ought to be duly and truly executed, and returned into such courts out of which they were awarded.

The sheriff, as also the bailiffs of liberties which receive the king's writs returnable in his court, ought to set their names to their return (*viz.* their surnames and christian names (*x*), so that the court may know of whom they took such returns, if need be (*y*).

And if any sheriff or bailiff do leave out his name in his return, he shall be grievously amerced, by force of 12 Ed. 2. And a return without the sheriff's name is void; and an outlawry was reversed for such cause. He is also to insert his title, and name of dignity.

In *London*, where there are two persons, both ought to put their names, for they are but one sheriff (*z*).

So if a return be by coroners, all ought to sign it (*a*).

The want of the sheriff's name shall be aided (*b*); and it is said, if the sheriff indorses, and does not subscribe his name, it is sufficient.

The returns are to be indorsed on the back of the writ; and if of length, a schedule may be annexed on parchment, of such return.

(*o*) 1 Vent. 405. 1 Roll. 119.

(*p*) 2 Roll. 202. l. 40.

(*q*) Hard. 423.

(*r*) 1 Vent. 405.

(*s*) Mod. Cas. 148, 149, 196, 250.

(*t*) *Makepeace v. Dillon*, Fort. 563.

(*u*) 5 East, 386.

(*a*) Plow. 63, a.

(*y*) Fitz. Return. 8.

(*z*) Hob. 79.

(*a*) Ib. & 39 II. 6. 41.

(*b*) Carth. 56.

If king grants return of writs in a precinct.

By prescription a hundred may have return of writs.

At what time.

Where writ expires in vacation.

All processes directed to the sheriff to be executed, &c.

Sheriff, &c. ought to set their names to returns.

12 Ed. 2. c. 5.
8 H. 6.

If name left out, void.

Two persons sheriff.

Coroners.

21 Jac. 1. c. 13.
Want of sheriff's name aided.

Returns to be indorsed.

Must be made
in the name of
the high sheriff.

All returns, although made by the under-sheriff, yet must be in the name of the high sheriff (*c*); and *his* name must be put thereto, or it is void (*d*).

Sheriff must
return truly.

The sheriff must return truly, and not contrary to the record; if he does, he falsifies all his proceedings (*e*).

Where defendant had been arrested by a wrong name, and the sheriff returned "I have taken *A. B.* sued by the name of *C. D.*;" as the arrest was illegal, and the sheriff a trespasser, and liable to an action for false imprisonment, an attachment which had issued for not bringing in the defendant's body was set aside (*f*).

But he cannot return contrary to his former return on record (*g*). So it ought not to falsify the writ, for that belongs to the defendant (*h*).

Return of old
sheriff not to
conclude new.

And the return of the old sheriff shall not conclude the new sheriff (*i*).

Ought to answer
the point and
be certain.

Every return ought to answer the point of the writ, and it is said ought to be certain to every intent, as a declaration ought to be; and the sheriff is bound to take knowledge of the law in making his return; but as the sheriff's return is only to ascertain to the court the truth of the matter, it requires not such precise certainty as is required in pleading (*k*).

If he show the
writ performed.

If he show the command of the writ performed, in substance, it is sufficient, as it says *infra nominatus et captus est* (*l*); though it does not say by whom, or how.

Attachiari feci, for *qui facit per alium facit per se* (*m*).

So *scire feci*, or *summ' feci*, &c., per *A. and B.* without saying *probos et legales homines* (*n*).

So if it refers to the writ, it is sufficient, without repeating the words of it; as *scire feci prædict' B. essendi sec' tenor' brevis*, without saying where or what to do (*o*).

Ad faciendum quod breve requirit (*p*).

So it is sufficient if the return be ascertained by the writ (*q*).

(*c*) 3 Bulstr. 78.

(*d*) 1 Bulstr. 73.

(*e*) Cro. Jac. 223.

(*f*) Rex. v. Sh. of Surrey, 1 Marsh. 75.

(*g*) 2 Roll. 458. l. 25.

(*h*) Salk. 581.

(*i*) Dalt. 516.

(*k*) 8 Co. 127, 128.

(*l*) Salk. 589.

(*m*) Ib. Skin. 552.

(*n*) 2 Roll. 459. l. 50, 53.

(*o*) 2 Roll. 460. l. 2.

(*p*) Ib. l. 5.

(*q*) Ib. l. 15.

So surplusage in a return shall be rejected: as *parat' habeo hubicunq'* for *ubicunq'* shall be rejected (*r*).

He ought to answer to the whole command of the writ; and therefore a panel with nine names, or less than required, is bad (*s*). To answer the whole.

Returns ought to be made according to the ancient course, and according to precedents (*t*), and by the usual words, otherwise they are not good. To be made according to precedents.

Statutes aid mis-returns and insufficient returns, but not where there is *not* any return (*u*). Statutes aid mis-returns.

None can make a return but such a person who at the time of the return remains an officer to the court. Officer only can make return.

Officers are not to return feigned names for summoners, but the true ones (*x*). Feigned names not to be returned.

That in returns to *elegit*, or of a writ in nature of an *elegit*, the words of the writ ought to be pursued (*y*). Words in *elegit* to be pursued.

Returns are nothing else but the sheriff's answer touching that which they are commanded to do by the king's writ, and are but to inform the court of the truth of the matter; and yet it seems to be the most difficult thing belonging to the office; for the sheriff must be very careful and circumspect that he make these returns according to law, both for substance and form; otherwise he shall not only endanger himself to be amerced, or sued for the same, but also he shall endamage the parties, and may hazard the cause or suit itself; for it is often to be found that judgments have been stayed for defaults apparent in the sheriff's return (*z*). Returns are nothing but sheriff's answer.

The answer of the sheriff, if *general*, is usually indorsed on the writ itself; but if it be *special*, it is commonly ingrossed on a distinct schedule or piece of parchment, and annexed to the body of the writ, at the same time indorsing these words on the writ, Answer, if general, is indorsed, if special, scheduled.

“The execution of this writ appears in a certain schedule hereunto annexed.”

In every original writ, where summons lies, the sheriff must first summon or warn the tenant or defendant to appear and answer, &c. and this must be done in the pre- Where summons lies, how sheriff to act.

(*r*) Salk. 589.

(*s*) 2 Roll. 461. l. 2.

(*t*) Dalt. 162, 163.

(*u*) Cro. Car. 587. 18 El. 8 H. 6.

c. 12.

(*v*) Searl & Long's case, Mod. Rep. 248.

(*y*) Dalt. 518.

(*z*) Dalt. 162.

sence of two real summoners, which being done, the sheriff must return the writ in this manner, *viz.* if the defendant be sufficient, first he must return the two common pledges, *John Doe* and *Richard Roe*, for the plaintiff, and then the names of the summoners as follows :

Pledges to prosecute. { *John Doe*
and
Richard Roe.

Summoners of the within-named *I. S.* (the defendant) { *W. B.*
and
R. W.

The answer of *W. B.*, esq. sheriff.

Pledges to prosecute { *John Doe*
and
Richard Roe.

Nihil in debt.

The within-named *I. S.* hath nothing in my bailiwick where or by which I can summon him, nor is he found in the same. The answer of, &c.

If it be on an *original* in case, then you say,

Return to an original in case.

“ The within-named *I. S.* hath not any thing in my bailiwick whereby he can be *attached*, nor is he found in the same. The answer of, &c.”

If more defendants than one, then say,

Nihil against two.

“ The within-named *I. S.* and *T. I.* have not, nor hath either of them, any thing in my bailiwick whereby they or either of them can be attached ; nor are they, or is either of them, found in the same.”

If one be summoned, and the other not summoned, say,

One not found, the other summoned.

“ The within-named *I. S.* hath not any thing in my bailiwick, whereby he can be attached, nor is he found in the same.”

Summoners of the within-named *T. I.* are { *John Denn*
and
Richard Fenn.

The answer of, &c.

Previous to return of original, put pledges.
c. 124.

N. B.—Previous to any return on an *original*, put pledges to prosecute, *John Doe* and *Richard Roe*.

By 51 *G. 3.* it is enacted,

“ That in all cases where plaintiff shall proceed by original, or other writ and summons, or attachment thereupon, in any action against any person or persons, not having privilege of parliament, no writ of *distringas* shall issue for default of appearance, but the defendant shall be

“ served *personally* with the summons or attachment, at the
 “ foot of which shall be written a notice, informing the
 “ defendant of the intent and meaning of such service, to
 “ the effect following :

“ *C. D.* you are served with this process to the intent
 “ that you may appear, by your attorney, in His Majesty’s
 “ court of at *Westminster*, at the return hereof, being
 “ the day of in order to your defence in the
 “ action: and take notice, that in default of your appear-
 “ ance, the said *A. B.* will cause an appearance to be en-
 “ tered for you, and proceed thereon as if you had yourself
 “ appeared by your attorney.”

s. 2.

This act recites that provisions in the act, authorizing plaintiffs to appear for defendants, are not deemed to extend to proceedings by original and other writs whereon no *capias* issues, and therefore enacts

That in case it shall be made appear, to the satisfaction of the court, or, in the vacation, of any judge of the court from which such process shall issue, or into which the same shall be returnable, that the defendant, &c. could not be personally served with such summons or attachment, and that such process had been duly executed at the dwelling-house or place of abode of such defendant, &c. that then it shall be lawful for the plaintiff, &c. by leave of the court, or order of such judge, as aforesaid, to sue out a writ of *distringas*, to compel the appearance of such defendant or defendants, and that at the time of the execution of such *distringas*, there shall be served on the defendant, &c. by the officer executing such writ, and if he, she or they cannot be met with, there shall be left at his or their dwelling-house or other place where such *distringas* shall be executed, a written notice in the following form :

In the court of [specifying the court in which the
 suit shall be depending] between *A. B.* plaintiff, and *C. D.*
 defendant, [naming the parties.] Take notice, that I have
 this day distrained upon your goods and chattels for the
 sum of 40*s.* in consequence of your not having appeared,
 by your attorney, in the said court, at the return of a writ
 of returnable there on the day of
 and that in default of your appearing to the present writ of
distringas at the return thereof, being the day of
 the said *A. B.* will cause an appearance to be entered for
 you, and proceed thereon as if you had yourself appeared
 by your attorney.

E. F. [the name of the sheriff’s officer.]

To *C. D.* the above-named defendant.

Mesne process
how to be
returned.

Tardè not to
be made on
a *capias*.

If he return the
death of the
defendant.

On *sci. fa.* and
hab. corp. death
returned good.

Nihil on an
original, *quare
clausum fregit*.

The like
summons.

Return to an
attachment *cepi*.

Non est inventus.

Return to an
attachment
and proclama-
tion.

Non invent. to
a *capias*, *alias*
and *pluries*.

The like as to
two.

To mesne process, viz. *capias ad respondendum*, *alias* and *pluries*, *latitat*, *bill* of *Middlesex*, &c. the sheriff returns, *taken*, *cepi*, or *not found*, *non est inventus*; unless special circumstances arise, such as a *rescue*, or *sick*, therefore I shall set down these returns: but upon a *capias*, *tardè* is no good return, for the manifold mischiefs which may follow thereon: and therefore if such a return be made, the sheriff is to be amerced (a). But *tardè* is good on an attachment.

If the sheriff return the death of the defendant, he must further show, that the coroner had view of the body (b). But I think if he return the death it is sufficient, for the writ abates (c). In a *precipe quod reddat*, as also on a *sci. fa.* and *hab. corp. cum causa*, it is a good return that the tenant or party is dead (d).

Put pledges to prosecute first, then,

The within-named *I. B.* hath not any thing in my bailiwick whereby he can be attached, nor is he found in the same. The answer of, &c.

Pledges, &c. { *John Doe*
and
Richard Roe.
Summoners of the the within-named { *R. Browne*
and
I. Armstrong.

Summoners of the the within-named
C. D are

The answer of, &c.

I have taken the within-named *C. D.* whose body I have ready.

The within-named *C. D.* is not found in my bailiwick. The answer of, &c.

The sheriff cannot return *non est inventus* to a writ brought against *his own bailiff*, and delivered to him (e).

By virtue of this writ to me directed, I have caused public proclamation to be made in my bailiwick that the within-named *C. D.* be and appear on the day and at the place within written, as within I am commanded. And I further certify, that the within-named *C. D.* is not found in my bailiwick.

The within-named *C. D.* is not found in my bailiwick. The answer of, &c.

The within-named *C. D.* and *E. H.* are not, nor is either of them, found in my bailiwick. The answer of, &c.

(a) 21 H. 6. Fitz. Ret. 37. (c) Bro. 125.

42. (d) Br. Ret. 125.

(b) Fitz. Ret. 107. (e) Vent. 12. 21.

I have taken the within-named *C. D.* whose body I have ready as within I am commanded. The answer of, &c. *Cepi corpus.*

I have taken the within-named *C. D.* and *J. J.* whose bodies I have ready. The answer of, &c.

If the writ be against more defendants than one, and one be taken and the other not, return the *cepi corpus* as to him, and as to the others say, *Return of cepi as to one, and non inventus as to the others.*

“And the within-named *A. G.* and *I. H.* are not, nor is either of them, found in my bailiwick. The answer of, &c.

If the defendant resides in a liberty, where there is a proper bailiff or officer for the execution and return of the writ, whereupon the sheriff sends his precept directing him to execute it, if it is not done, the sheriff usually makes this return : *If defendant resides in a liberty.*

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *F.* to take and arrest the within-named *C. D.* which said bailiff hath the full return of all writs and processes, and the execution of the same, within the liberty aforesaid ; so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not as yet given me any answer thereto. The answer of, &c. (*f*). *Mandavi ballivo.*

If he has answered, say, which said bailiff hath answered me thus, *If writ is answered.*

“That the within-named *C. D.* is not found in my bailiwick ; or that he hath taken the within-named *C. D.* whose body he hath ready. The answer of *A. K.* “sheriff” (*g*).

The treasurer and barons of the Exchequer shall deliver to the *justices* a roll of all liberties that have return of writs : and if the sheriff returns *mandavi ballivo* of any other liberty, he shall be punishable by fine and ransom (*h*). *Roll of all liberties to be delivered.*

Amercements for insufficient returns made by stewards or bailiffs of liberties, shall be set upon their heads, and not upon the sheriff's. *Amercements for insufficient returns. 27. H. 8. c. 14.*

Upon a *capias*, the sheriff returned that the defendant was so sick that he could not take or carry him out of his house for fear of death ; and it was adjudged a good return (*i*). *Languidus a good return.*

(*f*) 2 Roll. 460, l. 50.

(*g*) 1b. l. 45.

(*h*) 2 Inst. 452.

(*i*) Fitz. Ret. 105. 122. Dalt. 213 ; & *semb. contra*, Baker v. Davenport, 8 Dow & Ry. 606.

In a late case, the court, doubting whether special circumstances showing that the sheriff could not safely take the party into custody, might not form a good return, yet held that the grounds of excuse must be shown to be continuing up to the return of the writ, and it appearing that the officer had allowed two days to elapse without inquiry after the state of the party, and he had in the interval escaped, the court quashed the return (*k*).

And a return to a *latitat* that the party was *insane* at the time the officer went to serve the writ, was held bad, for not stating that he continued in that state up to the return of the writ; but the court allowed it to be amended, and refused the attachment (*l*).

Sick in prison,
good.

Upon the *capias*, the sheriff returns *cepi corpus*, and that the defendant is sick in prison; this is a good return, if it be true (*m*).

Return of
languidus.

The return of the within writ appears in a schedule hereunto annexed. The answer of *A. P.* sheriff.

By virtue of the writ hereunto annexed, to me directed, I did, on the day of last, at and in a certain private dwelling-house of one situate at in my bailiwick, take the body of *C. D.* in the said writ named, she, the said *C. D.* having been on the day of aforesaid brought to bed of a child, and then being so very ill, weak and diseased therewith, that I could not remove her from and out of the room in which she was then lying so ill, weak and diseased as aforesaid without the greatest danger and peril of her life; and the said *C. D.* having but one small room in the said house in which she lay so ill, weak and diseased as aforesaid, I could not keep her in my custody without the greatest danger and peril of her life; whereupon I, from the necessity of the above circumstances, and for fear of occasioning her death, in case I continued her in my custody, on the account aforesaid, immediately relinquished the custody of the body of the said *C. D.* so being ill, weak and diseased as aforesaid, and afterwards, and so soon as it might be supposed she was so far recovered of her said illness, weakness and disease, as to be able to be removed without danger of her life on that account, to wit, on the day of in the year aforesaid, I, the said sheriff, went again to the said house and room, for the purpose of taking the said *C. D.* into my custody, in

(*k*) *Perkins v. Walter*, Cor. (1) *Cavenagh v. Collett*, 4B.&A.279.
Parke, J. J. in *K. B.*, Hil. 1831. (*m*) *Dalt.* 213.

execution of the said writ, but the said *C. D.* was not then, or ever after, found there, or in my bailiwick ; for which reason I cannot have the body of the said *C. D.* before the lord the king at *Westminster* aforesaid, on the day within mentioned, as within I am commanded.

By virtue of this writ to me directed, I have taken the within named *C. D.*, who remains in the prison of the lord the king of *Newgate*, under my custody, so ill and infirm, that I cannot have his body before the lord the king at the day and place within contained, as I am within commanded, without the greatest danger and peril of his life. The answer of, &c. [or with various infirmities, that by reason thereof I cannot remove the body of the said *C. D.* without the greatest danger of his life. Therefore the body of the said *C. D.* I cannot have at the day and place within mentioned, as, &c.] (*n*).

Return of *cepi*
in prison and
languidus.

In consideration that the sheriff of _____ hath this day, at my request, granted upon the within writ a warrant directed to _____ a special officer, I do hereby agree to save harmless and indemnify the said sheriff from and against all escapes, rescues or rescuers of the within-named defendant ; and I do also agree that the said sheriff shall not be compelled or compellable to make any return of the within writ.

Indemnity to
grant a warrant

By virtue of this writ to me directed, I have taken the within-named *C. D.* whose body remains in the prison of our lord the king under my custody. The answer of, &c.

Return in
custody.

By virtue of this writ to me directed, I have taken the within-named *T. R.* and him in the prison of our lord the king, under my custody, did safely keep, until afterwards (that is to say) on the day of in the year of his present Majesty's reign, I received a certain writ of our said lord the king of *habeas corpus cum causa*, directing me to have the body of the said *T. R.* before

Return to a writ where defendant went over by a *ha. corp.* in the absence of the chief justice committed by other judges (*o*).

His Majesty's chief justice of the common bench assigned to hold pleas in His Majesty's said court, at his chambers, in *Serjeant's Inn, Chancery-Lane, London*; immediately after the receipt of the said writ, by virtue and in obedience of the said writ, in the absence of the said chief justice, I had the body of the said *T. R.* with the said writ, and the return of the within cause, mentioned in a certain schedule to the said writ annexed, before the honourable *Mr. Justice* one of His Majesty's justices assigned to hold pleas in His Majesty's said court of the bench, who, on the day and year aforesaid, received him of me, and immediately committed him to the prison of our

(n) Dalt. 250.

(o) Dalt. 538.

said lord the king of the *Fleet*, and altogether discharged and exonerated me from the further custody of the said *T. R.* Therefore I cannot have the body of the said *T. R.* before His Majesty's justices at *Westminster*, as within I am commanded. The answer of, &c. (*p*).

Return defend-
ant a member
of parliament.

I, *J. W. G.* esq. and *W. N.* esq. sheriff of the county of *Middlesex*, humbly certify and return to His Majesty's justices at *Westminster*, that at the time and before the coming of His Majesty's writ of *capias ad satisfaciendum* to me directed, which is hereunto annexed, the parliament of our lord the king was, and from thence hitherto hath been, and still is, sitting at *Westminster* in the county of *Middlesex*; and I further certify and return, that *L. C.* esq. in the said writ named, at the time and before the coming of the said writ to me directed, was and from thence hitherto hath been, and still is, a Burgess of the House of Commons, and during that time did serve as a Burgess of the House of Commons, for the borough of, &c. Therefore I cannot take the body of the said *L. C.* and him safely keep, so that I might have his body before His Majesty's said justices at the day and place in the said writ mentioned, as by this writ I am commanded. The answer of, &c.

Return if pro-
tected by being
in the service
of an ambas-
sador, &c.

The within-named *I. L.* at the time of the delivery of this writ to me, to wit, on the day of in the year of His present Majesty's reign, and from that time until the return of the said writ, was in the service of plenipotentiary from the landgrave of *Hesse Cassel*, at the *British court*, as his private secretary, therefore I cannot have the body of the said *I. L.* before the lord the king at the day and place in the within writ mentioned, as within I am commanded. The answer of, &c.

Return that
the defendant
was bankrupt
at the time of
his arrest, and
bailiff dis-
charged him.

The execution of this writ appears in the schedule hereunto annexed, &c. The answer of *A. P.* esq. sheriff.

I humbly certify and return to our lord the king, that by virtue of the writ hereunto annexed, I did on the coming thereof to me, to wit, on the day of last, duly make my warrant thereon under my hand and seal of office, directed to *T. K. J. D.* and *R. D.*, my bailiffs of the hundred of *O.* in my county, whereby I commanded them, each and every of them, jointly and severally, that they, or any of them, should take *D. S.* in the said precept named, if he should be found in my bailiwick, and him safely keep, so that I might have his body before the lord the king at *Westminster* at the return of the said writ, to answer to *J. H.* in the said writ named, of the plea and to the bill in the said writ mentioned, which warrant I then delivered to

the said *T. K.* my officer, for execution thereof; and I further humbly certify to our said lord the king, that before the coming of the said writ to me, to wit, on the day of 18 a commission of bankrupt, bearing date at *Westminster* on that day, issued under the great seal of *Great Britain*, against the said *D. S.* directed to *J. R.*, *C. R.*, *F. D.*, *J. B.* and *L. M.* commissioners therein named, by three of which said commissioners, namely, *F. D.*, *J. B.*, and *L. M.* the said *D. S.* afterwards, and before the coming of the said writ to me, to wit, on the day of last, was duly found and declared a bankrupt, and as such bankrupt, the said three commissioners then caused notice to be given in writing to the said *D. S.* under their hands, according to the form of the statute in such case made and provided, that such commissioners, or the major part of them, in the said commission named and authorized (to wit, on the day of then instant, and the and of then next, at of the clock in the forenoon on each of the said days, at) had caused the said *D. S.* to be duly summoned by writing under the hands of the said three commissioners to be and appear before them, or the major part of the said commissioners in the said commission named, at those times, there to be examined, and to make a full and true discovery and disclosure of his estate and effects according to the directions of the act of parliament then in force concerning bankrupts, particularly the act of parliament passed in the sixth year of the reign of His Majesty King *George 4*, intituled, "An Act to amend the Laws relating to Bankrupts." And I further certify to our said lord the king, that the commission of bankruptcy is still in force, and that afterwards, and before the coming of the said precept to me, to wit, on the of last, notice was duly given in the *London Gazette* that such commission had issued out, and the times and place of the said three meetings of the commissioners in the said commission named, or the major part of them, according to the form of the statute in such case made and provided, were inserted therein as hereinbefore mentioned, for the said *D. S.* to appear on the several days before mentioned, before the major part of the said commissioners, and that forty-two days from the time of giving the said notice in the *London Gazette* are not yet expired; and I further certify to our said lord the king, that by virtue of my said warrant, the said *J. K.* my officer, did within the said forty-two days, to wit, on the day of last, take and arrest the said *D. S.* by his body, (he the said *D. S.* being then and there going to surrender himself to the said commissioners,

6 G. 4. c. 16.
s. 117.

or the major part of them in the said commission named,) with intent to keep and detain the said *D. S.* safely, so that I might have his body before the said lord the king at *Westminster* at the return of the said writ, according to the exigency of the said writ: but then the said *D. S.* then and there asserted and declared to my said officer, that he was coming to surrender himself to the said commissioners, or the major part of them in the said commission named, and then and there produced to my said officer the said summons or notice under the hands of the major part of the said commissioners, and made appear to him that such notice or summons was signed by the major part of the said commissioners, and gave him a copy thereof, and demanded from him his discharge from the said arrest, for the cause aforesaid, whereupon the said *D. S.* was immediately discharged by my said officer from the said arrest, according to the form of the statute in such case made and provided; and I further certify and return to our said lord the king, that the said *D. S.* was not at any other time found within my bailiwick, therefore I cannot have the body of the said *D. S.* before our said lord the king at the day and place in the said writ mentioned, as by the said writ I am commanded. By the same sheriff.

That defendant
had become
bankrupt and
obtained his
certificate.

I do hereby certify and return to the lord the king at *Westminster*, that before the coming of the annexed writ to me directed, to wit, on the day of in the year of our Lord 18 *C. D.* in the said writ named, then being a dealer and chapman, and then being indebted to *E. F.* a subject of this kingdom, in the sum of 100*l.* and upwards, and being also then indebted to divers other persons in divers other large sums of money, became a bankrupt within the true intent and meaning of the several statutes made and then in force concerning bankrupts, or some or one of them; and thereupon a certain commission of bankrupt, under the great seal of the united kingdom of *Great Britain* and *Ireland*, bearing date at *Westminster*, the day and year last aforesaid, was duly awarded and issued out of His Majesty's high court of Chancery at *Westminster* aforesaid, at the petition of the said *E. F.* against the said *C. D.*, directed to certain commissioners therein named; and the said *C. D.* was thereupon duly found and declared a bankrupt by the major part of the said commissioners: and I do hereby further certify and return, that the said *C. D.* at the several meetings appointed for his surrendering himself, and making a discovery and disclosure of his estate and effects, and finishing his examination, duly surrendered himself to the major part of the said commissioners, and submitted to be ex-

amined from time to time; and at the last of the said meetings finished his examination upon oath, before the major part of the said commissioners; and upon such his examination, made a full discovery and disclosure of his estate and effects, and in all things conformed himself to the directions of the several statutes made and then in force concerning bankrupts, and particularly to the act of parliament made in the 6th year of His Majesty king *George* the Fourth, intituled, "An Act to amend the Laws relating to Bankrupts;" and that the said *C. D.* afterwards, and after the recovery of the damages in the said writ mentioned, and before the coming of the said writ to me directed, to wit, on the day of in the said year of our Lord 18 duly obtained his certificate of conformity to the several statutes made and then in force concerning bankrupts, and particularly to the said act of parliament made in the 5th year of his said Majesty's reign; and which certificate afterwards, and before the coming of the said writ to me directed, was duly allowed and confirmed to the right honourable then being lord high chancellor of *Great Britain*, according to the form of the statute in such case made and provided. And I hereby further certify and return, that the cause of action upon which the recovery in the said writ mentioned was had and obtained, accrued to the said *A. B.* in the said writ named, against the said *C. D.* before such time as the said *C. D.* became a bankrupt: Wherefore I, the said sheriff, having notice of all and singular the premises aforesaid, did forbear to take the body of the said *C. D.* as within I am commanded. The answer of, &c.

If the sheriff takes the defendant upon a writ, and he goes out of office before the return, and he has left his writ so returned, the new sheriff indorses underneath such return thus:

If the sheriff goes out of office after defendant taken, how to return writ.

"This writ, as above indorsed, was delivered to me the under-named now sheriff, by the above-named late sheriff, at the time of his going out of office. The answer of, &c."

To a Capias ad Satisfaciendum.

If the sheriff takes the body of the defendant, he must return that he hath it ready at the day (*p*). And it is a good return to say, *he is not found* (*q*).

If sheriff takes body, he must have it ready.

But let the sheriff take heed, if herein he return *cepi corpus*, that he hath the body in court at the day, otherwise he is chargeable for the whole debt, by reason it is

And if he return *cepi*, he must have the body.

an escape. And he was held not to be excused on the ground of an escape whilst being brought up to be discharged from former process, on which he was previously in custody (r).

Return of *cepi*.

I have taken the within-named *C. D.* whose body I have ready. The answer of, &c.

Non est invent.

The within-named *C. D.* is not found in my bailiwick. The answer of, &c.

If the sheriff return *non est inventus*, and defendant publicly follow his avocations, he is liable to an action for such false return, but not to the extent of the original debt where the defendant is solvent (s).

If on a *ca. sa.* execution be done and plaintiff paid.

But if ruled he must return.

Release on payment to sheriff no good return.

If on a *ca. sa.* the execution of it be done by the sheriff, and the plaintiff hath his demand, though the sheriff returneth not his writ, it is of no danger to him (t). But if he is ruled, I should think he ought to return the fact, that he took the body, and released him, on payment of the debt or damages to the plaintiff (u). For it is no good return to say he released the body on payment of the debt, for by the writ he hath no power to receive the money (x). But payment over to the plaintiff is, I should think, good, for in that case the purpose of the writ is answered, though without, it is not; because the sheriff may be insolvent, and no benefit arises to the plaintiff by the execution.

Mandavi ballivo who gave no answer.

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *F.* (or to *I. D.* bailiff of, &c.) to take and arrest the within named *C. D.* which said bailiff hath the full return of all writs and processes, and the execution of the same, within the liberty aforesaid; so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not given me any answer thereto.

The bailiff's return of *cepi*.

Or it may be, which said bailiff hath answered me thus:

I have taken the within-named *C. D.* whose body I have ready.

In this case, the rule must be for the bailiff to bring in the body; in the other, for the bailiff to return the writ.

Return by new sheriff where the old sheriff executed the writ.

If the old sheriff goes out of office, after the execution of the writ, then he returns such writ in his name; and the new sheriff returns thus:

"This writ, as above indorsed, was delivered to me, the

(r) *Ibbotson v. Tindal*, 1 Bing. 156.

(s) 2 Esp. 475.

(t) Dalt. 213.

(u) Dr. & St. 18. Dalt. 138.

(v) 12 Mod. 230.

“ under-named now sheriff, by the above-named late sheriff,
 “ at the time of his going out of office. The answer of, &c.”

This return was held to be proper (*y*). For it shows how the writ with the return comes into the present sheriff's hands; and *Dalt.* 549, hath this return. *Istud brevium*
held good by
C. P.

Tardè is not a good return to a *ca. sa.* nor to a *cap. ad resp.* (*z*).

Nor can the sheriff return the answer of a bailiff of a franchise, *quod tardè* (*a*); for it is the fault of the sheriff that he had not the writ before.

I have taken the body of the within-named *J. D.* and him detained in my custody, until he paid the debt and damages within mentioned; which debt and damages I paid to the plaintiff within named, and immediately afterwards discharged the said *J. D.* out of my custody. The answer of, &c. Return of
having taken
defendant, who
paid the money.

And he cannot detain the party until the costs of the attorney are paid (*b*).

If a writ of execution shall come to the sheriff against a prisoner (in the gaol) who is attainted of felony, the sheriff may return that the prisoner is attainted, and that therefore he cannot take him in execution: but if the sheriff shall serve the execution upon such a prisoner, and after he get his pardon for the felony, yet if he suffer the prisoner to go at large, the plaintiff at whose suit the execution was may bring debt for the escape; for although by the attainder the execution were superseded, yet by the pardon it was revived (*c*). If execution
comes and pri-
soner attainted,
&c. what sheriff
may return.

The sheriff, as before said, cannot take bail, or return a *rescue* on this writ (*d*). Sheriff cannot
take bail, &c.

It is an escape if he arrest on a *ca. sa.* and let defendant go, although there is a term intervening between the *teste* and return, because, being an execution, it is not void. But it would be otherwise on *mesne* process, for there the cause is out of court (*e*). Escape if taken
on a *ca. sa.*
though there is
a term inter-
vening.

Where the defendant is in custody, but the sheriff, on being asked to return the writ, gives notice that it is lost, but that he has the body, it is the same as if he returned *cepi corp.*; and the court set aside an attachment for not returning the writ (*f*).

(*y*) *Leigh v. Turner*, in C. P.
Trin. 24 Geo. 3.

(*c*) *Dalt.* 214.

(*d*) *Cro. Car.* 240.

(*z*) 5 Com. Dig. 444.

(*a*) 2 Roll. 461. l. 20.

(*e*) 2 L. Raym. 775. *Nector &*

Sharpe v. Gennett, *Cro. El.* 466.

(*b*) *Martin v. Francis*, 2 B. & Al. 402.

(*f*) *R. v. Sh. of Kent*, 1 Mar. 289.

*To a Capias Utlagatum.**Vide title Bail, p. 88.*

May return
non est inventus
or *cepi*; also
nihil.

Upon the *capias utlagatum* the sheriff may return the defendant not found, or that he hath taken him; and he may also return that he hath not any lands, goods or chattels on the day he was outlawed, or at any time since.

May on this
writ imprison
an infant.

And it is said that on this writ, if it be against an infant of the age of 14 years, the sheriff may imprison him, and seize his goods (*g*).

Sheriff on this writ may take the *posse comitatus* (*h*).

May return in
prison for a
debt.

The sheriff, it is said, may return that the party is in prison upon a condemnation for debt (*i*). But then he must bring him into court.

What sheriff
may do on
this writ.

The sheriff and his officers on this writ may seize to the king's use all the goods and chattels, real and personal, of all such persons as shall be outlawed in any personal action, that they had at the time the outlawry pronounced: and they may take for the king all the profits of the lands in the possession of the party outlawed; they may mow or sever, and take all the corn and grass growing, and take the seed and herbage of the grounds, &c. (as they arise and grow of themselves) and the rents of his farmers, as the party outlawed might; but they may not meddle with the possession of the lands, to plough, sow, grant, or let the same, &c. And if the party outlawed shall make a feoffment of his land, the king shall have no more the profits thereof, but the feoffee shall have the same, for that the king hath not any possession of the land, although he hath the profits thereof (*k*). And yet if the tenant for years be outlawed, the king or his officers may seize the land and term, and may plough the same land to sow the corn, and may occupy the same in the same manner as the termor or tenant might. But otherwise it is when the tenant of a freehold is outlawed, for in such case the king may cut the grass, &c. for that it is a thing that is annual, (sc. yearly cut or fed,) but he may not plough the land, nor cut the underwoods; neither shall the king, or his officers, meddle to cut or crop any

Goods and pro-
fits of land.

Mow and take
corn, grass.

But not med-
dle with posses-
sion of the land.

If tenant of the
freehold out-
lawed.

(*g*) Dalt. 215.

(*h*) Fitz. Ret. 110. Dalt. 217.

(*i*) Lib. Int. 336, b.

(*k*) Br. Her. 21. 26. & 30. Br.
Issues, 9, 10. Plow. 541, b. Staunf.
Prer. 57. b.

trees growing upon the freehold (*l*). But where a woman executrix takes a husband who is outlawed, the goods of the testator shall not be thereby forfeited (*m*). And so if an executor himself be outlawed he shall not thereby forfeit the goods of the testator.

If woman executrix takes a husband who is outlawed.

If a woman covert be outlawed in an action of debt or trespass, the king is not to have her term (or a lease for years which she hath) for that it is in the husband (*n*).

If woman covert be outlawed.

He that is outlawed in a personal action shall forfeit such debts as were due to him by simple contract (*o*); and so by bond or other specialty.

Outlaw forfeits debts.

No goods lawfully distrained, let or demised, pawned or pledged, shall be taken or seized for outlawry, until the lease be determined, or the rent or other satisfaction be yielded upon the distress, or the money paid for the pawn or pledge (*p*). But goods bailed or delivered me to keep, if the bail are outlawed, these goods may be seized and taken for the king.

Goods distrained, let, pawned, &c. not to be seized.

No goods fixed or annexed to the freehold shall be taken or seized for outlawry; as a furnace, table fixed to the ground with posts, nor wainscot, doors, windows, locks, pales, and the like (*q*). Deer in a park shall not be forfeited by outlawry in a personal action (*r*).

What may not be taken.

If the sheriff take the body, how to proceed, title *Bail*, p. 82.

If body taken.

Where there are two outlawries at different times, the first inquisition shall prevail; and where there are two in one day, and both inquisitions on one day, there the first lease shall be preferred (*s*).

Two outlawries.

Copyhold lands are not liable to be seized upon an outlawry, because it would be prejudicial to the lord; nor upon an extent (*t*).

Copyhold lands not liable.

If there are goods taken, or lands, &c. on the writ, the sheriff is to take an inquisition thereon, and inquire by a jury what goods, lands or chattels the party outlawed had the day of the outlawry, or at any time after, and return his inquisition so taken into court, and the goods

If goods, &c. taken, the sheriff takes inquisition.

(*l*) 9 H. 6. fol. 21. Dalt. 83.

(*p*) 4 E. 6. Br. Distrain. 75.

(*m*) 33 H. 6. Br. Forf. 71.

22 E. 4.

(*n*) 9 H. 6. 52.

(*q*) 20 H. 7. fol. 13. b, and 2 E. 4. 12.

(*o*) Slade's case, 4 Co. 95. a.; Br. Forf. 107. 16 E. 4. & 4 H. 7. 17.

(*r*) 10 H. 7. fo. 7. a.

(*s*) Parker's R. 112.

(*t*) Ib. 190. 195.

so taken he may keep until he receives a *vend. exp.* for the sale thereof (*u*).

The inquisition
on a *capias*
utlagatum.

Middlesex, } An inquisition indented, taken at *Guildhall*,
to wit. } *Westminster*, in the county aforesaid, on
the day of _____ in the _____ year of the reign
of our sovereign lord *William* the fourth, &c. before me,
W. G. esq. and *W. N. esq.*, sheriff of the county aforesaid,
by virtue of the king's writ to me directed, which is hereunto
annexed, on the oath of *A. B. C. D.* [*here name the twelve*
jurors] good and lawful men of my bailiwick, who being sworn
and charged to inquire of all and singular the things in the
said writ mentioned and contained, on their oath say, that
C. D. in the said writ named, on the _____ day of

Goods and
chattels,
debts, &c.

last, on which day he was outlawed, was, and on the day of
taking this inquisition is possessed, as of his own proper goods
and chattels, of and in two beds, &c. [*here set forth exactly*
the goods and chattels taken, and also be particular as to describ-
ing the debts due to the outlawed, or the return will be bad,
and how he came by every bill or note of hand, if any, viz. by
indorsement, or acceptance, &c. and the parties names indorsed
thereon, and also show whether the debts seized are for goods
sold, money lent, &c. if you have evidence before you, but not
else;] and also of and in the remainder of a certain term of
ninety-nine years to come and unexpired of and in all that
piece or parcel of ground, [*describe the premises as in the*
lease,] demised, by indenture of lease, bearing date the
day of _____ 18 _____ and made between, &c. at the

Terms for years.

yearly rent of _____ all and singular which goods, chattels
and premises are the property of the said *C. D.*, and that the
said goods and chattels are worth, to be sold, the sum of
_____ of lawful money of *Great Britain*; which said goods
and chattels I the said sheriff, on the day of taking this inqui-
sition, have seized and taken into His Majesty's hands,
according to the command of the said writ; and the jurors
aforesaid, upon their oath aforesaid, further say, that the
said *C. D.* on the said day on which he was outlawed, or at
any time since, had not, nor on the day of taking this inqui-
sition hath any lands or tenements, or any other or more
goods or chattels in my bailiwick, to the knowledge of the
said jurors, which can be seized or taken into His Majesty's
hands by virtue of the writ. In witness whereof, as well I
the said sheriff, as the said jurors aforesaid, to this inquisition
have set our seals, the day and year first above-mentioned.

Return to be
indorsed on the
writ.

The within-named *C. D.* is not found in my bailiwick :
The residue of the execution of this writ appears in the inqui-
sition hereto annexed. The answer of, &c.

[As before, unto these words,] upon their oath say, that J. S. in the said writ named, hath not, nor had he on the day of on which day he was outlawed, any goods or chattels, lands or tenements, in my bailiwick, to the knowledge of the said jurors, which can be seized or taken into His Majesty's hands by virtue of the said writ. In witness, &c.

Return of
nulla bona.

By virtue of this writ to me directed, I have sold the goods and chattels within-mentioned, for the within-mentioned sum of being the dearest price I could get for the same, which monies I have before the barons of the king's Exchequer at *Westminster*, at the day within-mentioned, ready to be paid to His Majesty's use. The answer of, &c.

Return of
venditioni
exponas.

Distringas.

Summoners are, { *John Denn*
 and
 Richard Fenn.

To a *distringas*
nuper vice com.
distrained.

Issue 40s.

The answer of *J. A.* esq. sheriff.

The within-named *J. S.* hath not any lands or chattels in my bailiwick where or by which I can distrain him as within I am commanded. The answer of, &c.

Nihil to a dis-
trict, against a
member.

In debt upon a *distringas*, the sheriff returned that he had sent to the bailiff of the liberty, and that he gave no answer; and for that he did not further return that he had nothing in his bailiwick, he was amerced (*x*).

Sheriff returned
that he had sent
to the bailiff,
but not *nihil*.

The sheriff may return to this writ, *tardè*, "*but not against the late sheriff*," on his return of *cepi*; in that case, he must return issues (*y*), and not less than 40*s*.

May return
tardè.

Although the words of the *distringas* are, that the sheriff distrain the defendant by all his lands and chattels, yet he ought to distrain him reasonably, and not according to the words of the writ (*z*).

Ought to dis-
train reasonably.

The usual issues on the first *distringas* are 40*s.* on the second 4*l.* and so double the sum, except the rule comes to the contrary ; as where further costs incurred in consequence of the delay (*a*).

Usual issues.

The execution of this writ appears in the panel annexed.
The answer of, &c.

Distringas juratorum.

Middlesex, } The names of the jury between *A. B.* plain-
to wit. } tiff, and *C. D.* defendant, in a plea of debt.
(Here insert the names of the jury.)

(x) Br. Ret. 23.

(z) Br. 120.

(y) Br. 24.

(a) Philips v. Morgan, 4 B. & A. 652.

There are *distringas* against bodies corporate, peers, members, &c., all of which are to have *issues* returned on them, or *nihil*, as before mentioned.

To Writ of Ad quod Damnum.

Warrant on a writ of *ad quod damnum*.

——— } *T. B.* esq. sheriff of the county aforesaid, to
to wit. } *A. B.* my bailiff, greeting. By virtue of His Majesty's writ of *ad quod damnum*, under the great seal of *Great Britain*, to me directed, I command you, that forthwith you summon the several persons hereundernamed, that they be and appear before me on the day of at of the clock in the forenoon of the same day, at the house of commonly called or known by the name or sign of the in my county, then and there to inquire if it will be to the damage or prejudice of our sovereign lord the king, or of any other, if our said lord the king should grant unto *M. E.* in the said writ named, license to inclose certain footways, or paths, or passages, in the said writ particularly specified; and all and every such other matters and things as shall be then and there given them in charge. Hereof fail not, as you will answer at your peril. Given under the seal of my office the day of in the year, &c.

An inquisition taken on a writ of *ad quod damnum*.

——— } *An inquisition* indented, taken at the in
to wit. } the said county, on the day of
in the year of the reign of our sovereign lord *William* the fourth, &c. and in the year, &c. before *J. B.* esq. sheriff of the said county. By virtue of a writ of our sovereign lord the king to me directed, and to this inquisition annexed, by the oath of *C. M.* &c. who being charged and sworn upon their oath, say, that it will not be to the prejudice or damage of our sovereign lord the king, or of any other, if our said lord the king should grant to *M. E.* in the said writ named, license to inclose a certain way or road lying within and under the south walls of the city of *C.* leading from, &c. and also, if the said *M. E.* doth hold the said way or road so inclosed to him the said *M. E.* his heirs and assigns for ever, so that there be and remain, instead of the said way or road, so to be inclosed as aforesaid, another way or road as convenient and commodious for travellers and passengers passing through the same.
In witness, &c.

To Writ of Dower.

c. 3.

Summons on the land to be

By 31 *El.* it is enacted,

“ That after every summons upon the land in any real action, fourteen days at the least before the day of the

“return thereof, proclamation of the summons shall be made on a *Sunday*, in form aforesaid, at or near to the most usual door of the churches or chapel of that town or parish where the land whereupon the summons was made doth lie, and that proclamation so made as aforesaid shall be returned, together with the names of the summoners; and if such summons shall not be proclaimed and returned, according to the tenor and meaning of this act, then no *grand cape* to be awarded, but an *alias* and *pluries* summons, as the cause shall require, until a summons and proclamation shall be duly made and returned, according to the tenor and meaning of this act.”

made 14 days
before return
of writ, and
proclamation at
the church door.

*See 1 Br.
c. 45*

Upon a writ of dower, the sheriff must first summon the defendant upon the land, and afterwards to proclaim the summons at the church-door of the parish where the land lieth; and it is said, a summons personally on the defendant seems sufficient, without either summons on the land or proclamation at the church-door (b).

What sheriff
is to do.

Pledges to prosecute { *John Doe*
and
Richard Roe.

Return to a
writ of dower.

Summoners of the within-
named *C. D.* are - { *R. M.*
and
J. F.

And at the most usual door of the parish church of *Saint S.* within-mentioned, on *Sunday*, the day of in the year within-written, immediately after divine service and sermon ended, I did cause public proclamation to be made, according to the form of the statute in such case made and provided. The answer of, &c.

Proclamation
thereon.

Upon the *grand cape*, the sheriff hath two things in command; the one to take the land in the hands of the king, and the other to summon the tenant; but the first is mere form, and void, and the sheriff ought not to seize the lands into the king's hands by force thereof. He must summon the tenant to answer to his default, and further to answer to the demand (c). And the sheriff ought to return the names of the summoners (d).

Grand cape.

If the place be within a franchise which hath full return of writs, then the sheriff is to write to the bailiff, who is to make return to the sheriff (e).

Franchise.

The *grand cape* must be served fifteen days before the return-day (f).

When to
be served.

(b) Dalt. 225.

(e) Dalt. 249. Lib. Intr. 399, b.

(c) Dalt. 249.

(f) Br. Gr. Cape, 29.

(d) Br. Rel. 86. N. R. Brev. 178. Dalt. 249.

If no lands.

If there be no lands, &c. the sheriff may return *nihil* (g).

Return of
grand cape.

By virtue of this writ to me directed, I have by *A. B.* and *E. H.* good and lawful men of my bailiwick, given notice to the within-named *C. D.* to be and appear before the king's justices at *Westminster*, at the time and place within-mentioned, as I am within commanded; and I have taken, by the view of *I. S.* and *T. H.* honest and lawful men of my county, into His Majesty's hands, the land and premises within-mentioned, as also I am within commanded. The answer of, &c.

The words of the writ are, *take into our hands*, by the view of honest and lawful men of your county, ten messuages, &c. (*h*).

Return to a
writ of *hab. fac.*
seisinam.

The execution of this writ appears in a certain schedule hereto annexed. The answer of, &c.

By virtue of this writ to me directed, and to this schedule hereto annexed, I humbly certify to the justices of our lord the king of the bench, that on the day of in the year of the reign of His present Majesty, I have delivered to the within-named *P. B.* full *seisin* of the third part of the messuages, lands and premises, with the appurtenances, in the said writ specified, (that is to say,) of two messuages, situate and being in the parish of *A.* in the said county, and in the tenure of *J. B.* and *C. D.* with the appurtenances thereto belonging, and also of two acres of land, with the appurtenances, in the parish and county aforesaid, in the possession of, &c. to hold to the said *P. B.* in severalty by metes and bounds, as and in the name of dower of her the said *P. B.* of the endowment of the said *J. P.* her late husband, as by the said writ I am commanded.

How to put the
demandant in
possession.

If a woman recover in a writ of dower, the sheriff may put her in possession or *seisin* by a clod, or by grass growing upon the land, or by any beast being thereupon, &c. (*i*).

What sheriff
may deliver.

In a writ of dower, a writ went to the sheriff to deliver the wife ten marks *per annum* in land and rent, for her dower; and the sheriff delivered her, in land, five marks in yearly value, and five marks in rent issuing out of the land whereof she was dowable, and it was holden a good endowment (*k*).

If there are
three manors.

In dower of three manors, or three acres, the sheriff may assign to the wife one manor, or one acre, for all; and

(g) Fitz. 113.
(h) 3 Wils. 55.

(i) 40 E. 3. Fitz. Dow. 38.
(k) Br. Dow. 61.

he may assign the whole manor with the advowson, or may assign the third part of each, and the third presentment (*l*).

And note, that in dower, the sheriff is to make execution, and put the wife in execution of the third part by metes and bounds, if he can (*m*). And here the sheriff is a judge, and may execute the same himself, and shall not need to do it *per sacramentum, duod.* &c. But if the sheriff and the wife shall come together to the land, the sheriff may not make execution by these words, or in this manner, *i. e.* I deliver the *seisin* of the third part of the land according to the recovery ; for that is not good (*n*).

Sheriff to put the wife in execution of third part.

In some cases, the wife cannot have her dower assigned by metes and bounds, but must hold her dower *per my et per tout in common*: as of the profits of a mill, or of a wood, which coparceners hold, &c. (*o*) ; or of a common of pasture (*p*), or of an office, or of lands held in common (*q*), and she may have a third part of the profits assigned to her (*r*).

In some cases the wife cannot have her dower assigned by metes and bounds.

————— } An inquisition, indented, taken at, &c. in the
to wit. } county aforesaid, on the day of
in the year of the reign of our sovereign lord
William the fourth, &c. and in the year of our Lord
before me, *N. C.* Esq. sheriff of the county aforesaid, by
virtue of His Majesty's writ to me directed, and to this in-
quisition annexed, by the oath of *S. C. J. G.* [*here name the*
twelve jurors,] good and lawful men of my county, who
upon their oath say, that the within-named *S. A.* on the
day of died seised in his *demesne* as of fee
of and in one messuage, called the one stable
and one close of meadow called, &c. [*naming the several*
particulars,] situate, lying and being in in the parish
of in the county aforesaid, and of and in
5 l. 19 s. 4 d. issuing from and out of the following mes-
suages in aforesaid, to wit, of *10 s.* rent
issuing from and out of a messuage in the tenure of *A. R.* ;
of *10 s.* rent issuing from and out of a messuage in the
tenure of *J. T.* ; of *10 s.* rent issuing from and out of a
messuage in the tenure of *J. H.* ; of *10 s.* rent issuing from
and out of a messuage in the tenure of *R. S.* ; of *10 s.* rent
issuing from and out of a messuage in the tenure of *W. P.* ;
of *10 s.* rent issuing from and out of a messuage in the

Inquisition in dower.

(*l*) 12 E. 4. Br. Dow. 72.
Plow. 65, 66.

(*m*) 3 El. acc. & Co. L. 34 & 32.

(*n*) Fitz. Sci. fa. 92.

(*o*) Fitz. Avowry, 9.

(*p*) Fitz. Ent. 75. Assise, 435.

(*q*) Fitz. 149.

(*r*) Co. L. 32.

tenure of *G. R.*; of 8 *s.* rent issuing from and out of a messuage in the tenure of *J. P.*; of 6 *s.* rent issuing from and out of a messuage in the tenure of *K. D.*; of 8 *s.* rent issuing from and out of a messuage in the tenure of *R. C.*; of 1 *l.* rent, issuing from and out of a messuage in the tenure of *S. O.*: and of and in the reversion of the same messuages after the expiration or sooner determination of certain terms of years thereof respectively granted; and that the said *S.* did not die seised of any other messuages, lands or tenements, to the knowledge of the same jurors. And the jurors aforesaid on their oath further say, that the tenements and premises above named, with the appurtenances, are of the clear yearly value, in all issues beyond reprises, of 60 *l.* 11 *s.* 3 *d.*; and that the said *B. S.* esq. and *M.* his wife, in the writ aforesaid named, have sustained damages by reason of the detention of the dower within specified, from the said day of the issuing of the writ original within mentioned, beyond the value aforesaid, to 10 *l.* 5 *s.* 11 *d.* and for their costs and charges by them about their suit in that behalf expended, to 10 *s.* In witness whereof, as well I the said sheriff, as the jurors aforesaid, have to this inquisition interchangeably set our seals, the day, year and place abovesaid; and I do further humbly certify to the justices of the lord the king at *Westminster*, that by virtue of the said writ, I did on the _____ day of _____ in the year aforesaid, cause the said *B.* and *M.* to have full *seisin* of the third part of the tenements and rents aforesaid, with the appurtenances, to wit, of the said messuage, with the appurtenances, called the _____ in the tenure of *A. B.* the said messuage with the appurtenances, &c.; of the said 10 *s.* rent issuing from and out of the said messuage in the tenure of *A. R.*; of the said 10 *s.* rent issuing from and out of the said messuage of *J. T.*; of the said 10 *s.* rent issuing from and out of the said messuage in the tenure of *F. S.*; 9 *s.* 9 *d.* rent, parcel of the said 10 *s.* rent, issuing from and out of the said messuage in the tenure of *J. H.*; and also of the reversion of the four messuages last mentioned, after the expiration or sooner determination of the said terms of years thereof respectively granted, with the appurtenances, to hold to the said *B.* and *M.* in severalty by metes and bounds as the dower of the said *M.* of the endowment of the said *S. A.* her late husband, as by the said writ I am commanded. N. C. Esq. sheriff.

Warrant on Writ of Partition.

Warrant on
the writ of
partition.

_____ ss. *A. B.* esq. sheriff of the county aforesaid, to
B. L. and *M. L.* my bailiffs of the hundred of *S.* greeting.
By virtue of His Majesty's writ to me directed, I command

you, that if *C. K.* shall give me security that her suit shall be prosecuted, then summon *M. C.* that he be before His Majesty's justices at *Westminster*, in fifteen days of *Easter*, to show why the said *C. K.* and *M. C.* hold together and undivided ten messuages and twenty acres of land, &c. [*here set forth the parcels as in the writ*] with the appurtenances, in the parish of *K.* in the said county, and whereupon the said *C. K.* denies partition thereof to be made between them, according to the form of the statute in such case made and provided, and unjustly permits the same to be done, contrary to the statute. Hereof fail not. Given under my seal of office, &c.

This is to be served on the tenant of the premises, if found, if not, the wife, son or daughter of the tenant, (being 21 years old,) 40 days before the return.

8 & 9 W. 3.
c. 31. s. 1.

Pledges to prosecute, { *John Doe*
and
Richard Roe.

Return of the writ.

Summoners of the within-named { *I. S.*
and
L. W.

The answer of *A. B.* Esq. sheriff.

It is said (s), that when judgment is given upon the writ, it is thus :

Judgment on the writ of partition.

"That the partition shall be made between the parties, "and that the sheriff in his proper person shall go to the "lands or tenements, &c. and that he by the oath of "twelve lawful men of his bailiwick, &c. shall make partition between them, and that one part of the lands and "tenements shall be assigned to the plaintiff, or to one of "the plaintiffs, and another part to another parcener, &c. "not making mention of the eldest sister more than of the "youngest."

It appears there was great inconvenience to the sheriff to attend in person, sometimes on account of the distance, at other times his health, or some other infirmity, that might prevent him; for which reason an act was made to ease him in his duty, by which it is enacted,

8 & 9 W. 3.
c. 31. s. 4.

"That when the high sheriff, by reason of distance, infirmity or other hindrance, cannot conveniently be present at the execution of any judgment in partition, the under-sheriff, in the presence of two justices of the peace, may proceed to execution by inquisition: and the high sheriff shall make the same return as if he were personally pre-

If the sheriff cannot attend, under-sheriff with two justices may.

sent ; and the tenants of the lands shall be tenants for such parts, set out severally to the respective owners, under the same rents and reservations ; and the owners of the several purparts shall make good unto their respective tenants the said parts severally, as they were bound to do before partition made.

In case of disability of sheriff or his under-sheriff, the justices are to attend.

s. 5.

The sheriffs, their under-sheriffs and deputies, and in case of disability in the high sheriff, all justices of peace, shall give due attendance to the executing such writ of partition, (unless reasonable cause be shown to the court upon oath,) or otherwise be liable to pay unto the defendant such costs and damages as shall be awarded by the court, not exceeding 5*l.* for which the defendant may bring his action in any of His Majesty's courts at *Westminster*; and in case the demandant doth not agree to pay unto the sheriff or under-sheriff, justices and jurors, such fees as they shall demand, the court shall award what such person shall receive, having respect to the distance of the place from their habitations, for which they may severally bring their actions.

Made perp. by 3 & 4 Ann. c.18.

What sheriff is to do.

c. 34.

On receipt of the writ, the sheriff is to summon a jury of twelve men qualified by the several acts mentioned in 3 *G.* 2. and to give notice to the parties to attend him, and on the day he is to go to the land, &c. with the jurors (which ought to be shown them,) and then shall see the same and the boundaries thereof; then, on evidence being given him, he draws up in form an inquisition, which he and also the jurors are to sign and seal, pursuant to the writ ; and the reason why they sign and seal the same is for the better strengthening of the partition, and that the sheriff should not return what partition he himself thinks proper : when the partition is made and the inquisition signed, &c. he is to return the same to the justices, under his seal and the seal of the 12 jurors, so that they may give their final judgment thereon (*t*).

Fees.
s. 5.

If the fees are not paid to the sheriff, &c. by the demandant, then the court shall award the same, for which the sheriff, &c. may bring their action severally.

Ought to be shown the land.

It is said that the jury ought to be shown the lands before they make partition ; but if not, they must make it to the best of their judgment ; for they are compellable to make partition at their peril (*u*).

Purchaser of tenants in common, to

Upon a partition to be made between tenants in common, where one of them hath purchased lands that lie

(*t*) Co. Lit. 249. 168, b. 169.

(*u*) Dyer, 265, 266.

intermixt, and cannot be known, the party which purchased such lands ought to show the jury the bounds, (or the certainty of the number of acres) of his lands so purchased; but if neither party will give evidence therein to the jury, yet the sheriff and the jury are to make partition at their peril, as well as they can (*x*).

show intermixt land.

If there are two manors, the sheriff may assign one manor to one, and the other manor to the other, so that *both be of equal value* (*y*).

What sheriff may assign.

So an advowson may be divided between parceners, the one to present one turn, and the other another turn (*z*). So a rent charge. But estovers, as house-boot, hay-boot and fishery uncertain, as without number, cannot be divided (*a*). The profits of a mill, dove-house, or courts, tithes, and of stallage of fair, may be parted.

Advowson.

Rent-charge, &c.

If a county-palatine descend to divers coparceners, and they make partition, every one of them shall have a several county-palatine, and the liberties and prerogatives in it (*b*).

If co. palat. how to make partition.

So if coparceners of a manor make partition, every one shall have a several manor and court-baron.

Of coparceners of a manor.

In the inquisition it is fit that the sheriff name the lands, &c. and allot and show the contents of them.

To name the lands in the inquisition.

————— } An inquisition, indented, taken at, &c. in
to wit. } the county aforesaid, on, &c. before me,
N. C. esq. sheriff of the said county, by virtue of His Majesty's writ of *partitione facienda* to me directed, commanding me to cause ten messuages, &c. [*here set forth the premises*] in _____ in my county, to be divided into two equal parts, and one part of those parts to be delivered and assigned to C. K. and the other part thereof to M. C. to hold unto them and their heirs in severalty, on the oath of A. B. C. D. E. F. &c. [*here set forth the jurors names*] twelve free and lawful men of the said county, being charged and sworn to inquire of all and singular the matters and things in the said writ mentioned and contained, on their oath say, that the messuages, lands, tenements and annual rents, with the appurtenances, comprised in the schedule annexed, marked with the letter A. is one equal part of the messuages, lands, tenements and annual rents, with the appurtenances, specified in the said writ, and that the several messuages, lands, tenements and annual rents, com-

Inquisition on a writ of partition.

The parcels may be set forth at large, and the rents, in the inquisition, without annexing a

(1) Dalt. 265.

(a) Co. Lit. 32.

(y) Bro. Part. 29.

(b) Dalt. 61. 16 Vin. 221.

(z) Co. Lit. 32. 7 Ann. c. 18.

schedule, the same as in an elegit.

RETURN OF WRITS.—EXCHEQUER PROCESS.

prised in the schedule hereto annexed, marked with the letter *B.* is the other equal part thereof, and the said messuages, lands, tenements and annual rents, being so into two equal parts divided, I the said sheriff having respect to the true value thereof, on the day and year aforesaid, in the presence of the parties, by the oath and in the presence of the jurors aforesaid, the said first mentioned equal part comprised in the schedule marked with the letter *A.* to the said *C. K.* have caused to be delivered and assigned, and the said last-mentioned partition, comprised in the schedule marked with the letter *B.* to the said *M. C.* have caused to be delivered and assigned; to hold to them and their heirs in severalty, by the assignment and allotment made as aforesaid, according to the exigency of the said writ, so that neither the said *C. K.* nor the said *M. C.* have more of the said messuages, lands, tenements and annual rents aforesaid, with the appurtenances, than to them thereof belongs, and the said *C. K.* and *M. C.* may severally apportion themselves. In witness whereof, as well I the said sheriff, as the jurors aforesaid, have to this inquisition set our hands and seals, the day and year first above written.

Of the Exchequer Process.

Twice a year processes issue from the court of Exchequer, directed to the sheriff of each county, to execute and make returns; and also a writ of summons from the pipe, to summon the sheriffs to appear before the chancellor and barons in the Exchequer on the day prefixed, to have the monies *collected*, and which they owe to the king; and also a writ of summons *of the green wax* for their like appearance.

To the *two* latter writs, the sheriff *makes no return in writing*; but he is *opposed* before the cursitor-baron and the *foreign apposer*, he therefore keeps a copy of those schedules, so that he may answer, on their being read over to him.

The other writs are called,

1. "A *distringas* against collectors of taxes."
2. "The like, against inhabitants of parishes, for insufficiency of collectors."
3. "The like, against persons being accountants to the crown, for taxes or money imprest, namely, receivers general, agents, paymasters, contractors, &c."

4. "The like, against the executors of deceased accountants;" and

5. "The *long writ*, which is against the body, lands and goods of the persons named in the schedules "annexed."

For an excessive levy (for taxes) under 43 *Geo* 3, he is c 99. not entitled to any notice of action under s. 70 (c).

As to the Return of those Writs.

To No. 1. The proper return is *nihil*, unless the sheriff is informed that the collector has actually received the *insuper*; in that case he should distrain and return *large* issues. The propriety of a *nihil* return to this writ (except in the case above-mentioned) arises from hence: When an *insuper* is set by a receiver-general against a parish, the first *distringas* always issues against collectors, as if the *insuper* had been actually set against them, because it is always to be presumed that the parish has paid the collectors; but after a *nihil* return on the *distringas* against collectors, the next *distringas* is issued against the inhabitants of the parish, whether the money has been received by the collectors or not, because the inhabitants are responsible for the insufficiency of the collectors; but so long as issues are returned against collectors, the *distringas* does not issue against the parish.

To No. 2. To this writ the *proper* return is *issues* not less than *one shilling* in the pound.

If to save trouble and expense the parish offer to pay the *insuper* into the hands of the sheriff, he may then receive it, and must then state it in his return, and thereupon a record of the payment is made and drawn down into the pipe in order to be set in charge on the sheriff.

To No. 3. To this writ the proper return is "*issues*."

There being no person whose proper business it is to point out to the sheriff *the residue of the persons named in the schedules to this writ*, and there being at the time of issuing the same some *uncertainty* whether the whole of each *insuper* remains due; sums in part thereof being paid into the receipt from time to time, without bringing the tallies to the Exchequer office, in order to meet the proofs;

the sheriff should act with caution in the execution thereof: but though he cannot be expected to distrain and return issues against every person named in the schedules, yet some *reasonable diligence* should be used by him in the execution of this writ.

To No. 4. Unless the executors are known, the sheriff cannot return issues on this writ, and must therefore make a return of *nihil*.

To No. 5. The proper return and inquisition to be taken in pursuance of this writ are well understood.

The *general* process is so termed in contradistinction to *special* process.

The *former* consisting of various writs which are issued from the king's remembrancer's office after every issuable term, agreeably to ancient usage, against various debtors to the crown conjointly, or generally, whose names or debts are inserted in schedules annexed to each of those writs.

The *latter*, or *special process*, consists of separate writs, which issue at no stated periods, but as occasion may require, against individual debtors to the crown, *separately* and *specialty*, for the recovery of their debts.

The execution of the *general* process continues to be confided to the discretion of the sheriffs, regulated by their oaths, in the apposals, in the same manner as it was in ancient times, when they were principally employed in the collection of the revenue; but the execution of the *special* process of this court is superintended by the solicitors of the different branches of the revenue at whose instance the same are issued.

By a *Reg. Gen.* sheriffs are in future to return all writs and processes issuing out of the remembrancer's office against the king's debtors within seven days from the return-day, and the same shall be apposed at least four days before the last day of the term in which they are returnable; and the under-sheriff shall attend one clear day before such apposal, before the sworn clerk, to be examined touching such processes; and no slight answer is to be given on such apposal: upon which such clerks shall make out a certificate of defaulters to be taken into custody for their contempt (*d*).

I humbly certify that the collectors in the schedules hereunto annexed named, have not any thing in my bailiwick whereby I can distrain them, or any of them, nor are they found in the same. Return of *nihil* to No. 1.

The answer, of, &c.

By virtue of this writ to me directed, I have distrained the inhabitants of the several parishes in the schedules hereunto annexed mentioned, as within I am commanded, and return issues on the several sums in the said schedules mentioned, after the rate of 1 s. in the pound. Return of issues to No. 2.

The answer of, &c.

Middlesex, } *W. C.* esq. and *P. M.* esq., sheriff of the
to wit. } said county, do certify to the barons of
His Majesty's court of Exchequer at *Westminster*, that by virtue of the writ hereunto annexed, I have distrained the inhabitants of, &c. in the 5th schedule to the said writ annexed mentioned; and they have thereupon paid into my hands the several sums of and in the said schedule mentioned, and also the several sums of and in the 7th schedule to the said writ annexed mentioned, and also the sum of &c. [*here state the levy*], amounting in the whole to the sum of which said money I have ready. Return thereto levied.

The answer of, &c.

I humbly certify that the persons in the schedules annexed named have not any thing in my bailiwick whereby I can distrain them, or any of them, nor are they, or any of them, found within the same. Return of *nihil* to No. 3.

The answer of, &c.

I humbly certify that the executors, administrators, occupiers, heirs, or tenants, within mentioned, have not, nor hath any of them, any thing in my bailiwick whereby I can distrain them or any of them, nor are they, or any of them, found in the same. Return of *nihil* to No. 4.

The answer of, &c.

The several persons in the schedules hereunto annexed named, have not, nor hath any of them, any goods or chattels, lands or tenements, in my bailiwick, whereof or whereby I can levy on them the several sums of money respectively charged on them, as within mentioned, or any part thereof, as within I am commanded, nor are they, or any of them, found in my bailiwick. The executors, administrators, and possessors, heirs and tenants within-mentioned, have not, nor hath any of them, any lands or chattels in my bailiwick whereof or whereby I can distrain them, or any of them, as within I am commanded; nor are such executors, administrators, posses- Return to the long writ No. 5.

sors, heirs, or terre-tenants, or any of them, found in my bailiwick. The residue of the execution of this writ appears in a certain inquisition hereunto annexed.

The answer of, &c.

The inquisition.

Middlesex } An inquisition indented, taken at
to wit. } on the day of in the
year of the reign of our sovereign lord *William* the fourth,
&c., before me *A. B.* esq. and *C. D.* esq. sheriff of the said
county, by virtue of His Majesty's writ to me the said sheriff
directed, and to this inquisition annexed, to inquire of cer-
tain matters in the said writs specified; by the oaths of
A. B. C. D. [*here name the twelve jurors*] honest and lawful
men of the bailiwick of me the said sheriff, who upon their
oath say, that to the knowledge of them the said jurors,
the several persons in the schedules to the said writ an-
nexed named, had not, nor had any of them, any lands or
tenements, in my bailiwick, upon the several days on which
in the said schedule each and every of them are mentioned
to have first become His Majesty's debtors, or at any time
since, to the day of the taking of this inquisition: nor
have or hath the said several persons, or any of them, any
goods or chattels in my bailiwick. And the jurors afore-
said, upon their oath aforesaid, further say, that they know
not whether any of the said several persons be dead, or
on what day, or in what year, or where they, or any of
them, died; nor had the said several persons deceased,
or any of them, to the knowledge of the said jurors, any
goods or chattels in the bailiwick of me the said sheriff, at
the time they respectively died; nor did the said several
persons deceased, or any of them, to the knowledge of the
said jurors, die seised of any lands or tenements in the
bailiwick of me the said sheriff; therefore, the said jurors
say, they cannot appraise any such goods or chattels, lands
or tenements as aforesaid, as by the said writ is commanded:
nor can I the said sheriff take or seize any such goods or
chattels, lands or tenements as aforesaid, into His Majesty's
hands, as by the said writ I am commanded: In witness
whereof, as well I the said sheriff, as the said jurors, have
to this inquisition set our hands and seals, the day and
year first above written.

Return to the
long writ process
against persons
for recognizance
forfeited, &c.

I have levied of the goods and chattels in my baili-
wick of the several persons named in the schedule to
this writ annexed, marked *A.* and signed by me the under-
named sheriff, the several sums of money set opposite to
the respective names of such several persons, and amount-
ing in the whole to the sum of 20*l.* which money remains
in my hands, ready to be paid to His Majesty's use. The
several other persons named in the schedules annexed to

this writ have not, nor hath any of them, any goods or chattels in my bailiwick whereof or whereby I can levy the several sums of money charged upon them, and each of them, in the said last-mentioned schedule, or any part thereof, as within I am commanded, nor are such several persons, or any of them, found in my bailiwick. The executors, heirs and tenants within mentioned, have not, nor hath any of them, any lands or chattels in my bailiwick, whereof or whereby I can distrain them, or any of them, as within I am commanded, nor are they, or any of them, found in my bailiwick. The residue of the execution of this writ appears in a certain inquisition hereunto annexed. The answer of, &c.

Middlesex } An inquisition indented, taken at, &c. on The inquisition.
to wit. } the day of in the
year of the reign, &c., before me *A. B.* esq., and *C. D.* esq. sheriff of the said county, by virtue of His Majesty's writ to me the said sheriff directed, and to this inquisition annexed, to inquire of certain matters in the said writ specified, by the oath of *A. B.* &c., [*the jurors' names*] honest and lawful men of the bailiwick of me the said sheriff, who upon their oath say, that to the knowledge of them the said jurors, the several persons in the schedules to the said writ annexed named, or any of them, had not any lands or tenements in the bailiwick of me the said sheriff, on the several days and years specified in the said schedules, in which they, or any of them, first became indebted to His Majesty in the several sums exacted in the said schedules, or ever after, until the day of in the year of His Majesty's reign, (*the time of issuing the said writ hereto annexed*); and the jurors aforesaid, upon their oath aforesaid, further say, that they know not whether any of the said several persons be dead, or on what day, or in what year, or where they or any of them died; nor had the said several persons deceased, or any of them, to the knowledge of them the said jurors, in the bailiwick of me the said sheriff, any goods or chattels on the several days and years in which they, or any of them died; nor had the said several persons deceased, or any of them, to the knowledge of them the said jurors, any lands or tenements, in the bailiwick of me the said sheriff, the several days and years in which they, or any of them, first became indebted to His Majesty in the several sums charged upon them in the said schedules, or ever after, until the said day of in the year aforesaid, therefore, the said jurors say, they cannot extend any such lands or tenements as aforesaid, as by the said writ is commanded, nor can I the said sheriff take or seize any such lands or

tenements, goods or chattels as aforesaid, into His Majesty's hands, as by the said writ I am commanded. In witness, &c.

I think there is a process against clergymen for the arrears of the tenths, or first fruits, which may be returned thus :

If no goods on the parson's process.

I hereby certify, that the several persons in the schedule to this writ annexed, have not or hath either of them any goods or chattels, lands or tenements, in my bailiwick, whereby I can distrain them, or any or either of them, as within I am commanded, nor are they, or is either of them, found in the same. The answer of, &c.

If some are not found, and some are, return thus.

I humbly certify, that *A. B.* clerk, and *G. H.* clerk, two of the persons named in the schedule to this writ annexed, are not, nor is either of them, found in my bailiwick ; and I further certify, that by virtue of this writ to me directed, I have attached the rest of the several persons in the schedule to this writ annexed named, whose bodies I have before the said barons at the time and place within mentioned, as within I am commanded.

Warrant to levy debts on the pipe process.

Middlesex } *A. I.* and *G. K.* esq. sheriff of the county to wit. *J*aforesaid, to *C. K.* my bailiff, greeting : By virtue of His Majesty's summons of the *pipe* to me directed, I command you, that of the several persons in the schedules hereto annexed named, in my bailiwick, you collect and levy the several sums of money therein respectively charged on them, due to His Majesty, so that I may have those monies before the barons of His Majesty's *Exchequer* at *Westminster*, on next to come. Hereof fail not. Given, &c.

Add a copy of the schedule.

Warrant to the officer to collect post fines and old rents.

Middlesex } *A. I.* and *G. K.* esq. sheriff of the county to wit. *J*aforesaid, to *W. R.* my bailiff, for this purpose only, greeting : By virtue of His Majesty's writ of summons of the green wax to me directed, I command you, that of the several persons in the schedule hereunder written named, in my bailiwick, you collect and levy the several sums of money therein respectively charged on them, due to His Majesty, so that I may have those monies before the barons of His Majesty's *Exchequer* at *Westminster*, on next to come. Hereof fail not. Given, &c.

The schedule to the warrant is taken from the schedule to the writ.

On the *distringas* against collectors.

[*As before,*] I command you, that you distrain the several collectors in the schedule annexed named, by all their lands and chattels in my bailiwick, so that they, or any of them, do not meddle therewith, until I otherwise command

you, so that I may answer the issues of the said lands, and so that the said collectors do appear before the barons of His Majesty's *Exchequer* on, &c. to render an account to his said Majesty, as in the said schedule mentioned. Dated, &c.

That you distrain the inhabitants of the parishes in the schedules annexed named, by all their lands, &c. as before.

That you omit not, by reason of any liberty, &c., but enter the same, and distrain the several persons in the schedules annexed named, by all their lands, &c., as before.

On *distringas* against inhabitants.

On *distringas* against divers.

To Writ of De Excommunicato Capiendo.

The sheriff or other officer to whom the writ of *excommunicato capiendo*, or other process, shall be directed, need not bring the body into the King's Bench at the day of the return, but shall only return the writ thither, with declaration briefly in what manner he hath served and executed the same (*e*).

Need not bring in body at the day; but return the writ.

If the sheriff take him, he is to be committed to prison without bail. If he make an untrue return, he is to forfeit to the party grieved, 40*l.* (*f*).

To be committed to gaol. Untrue return.

I have taken the within-named *J. D.* whose body remains in the prison of the lord the king of *N.* under my custody. The answer of, &c.

Return of *cepi corpus*.

To Writ of Elegit.

For the particulars of this writ, as to the execution thereof, *see* title EXECUTION, *p.* 143. Upon an ejectment being brought on an *elegit* (*g*), it appeared upon the inquisition, that it mentioned by name all the different farms and tenements of the defendant's estate in the county, with their value, the number of acres in each, be the same more or less, the tenants names, yearly value besides reprises, and the clear yearly amount of the whole; and then repeating the names of a certain number of them, their number of acres, more or less, and yearly amount; it found that those particular farms and tenements *were a true and equal moiety* of all the said lands and premises of the defendant in the county, "which moiety of the said lands and premises I the said sheriff, on the day of taking this inquisition, have caused

Sheriff not bound to deliver a moiety of each particular tenement.

(*e*) 5 El. c. 23. Dalt. 217.

(*f*) Ib.

(*g*) Rastall, 262. Litt. Ent. 574.

Clif. 877.

to be delivered to the lessor of the plaintiff, by the price and extent aforesaid, &c.” *Cowper* objected that the *elegit* had not been duly executed, and that the inquisition was void on the face of it, “for that a moiety of each farm ought to have been extended, and delivered to the lessor of the plaintiff,” and *not* a *certain number* of distinct farms, amounting in value to a moiety of the whole. The court held this return to be good; and *Buller, J.* said, “it is agreed, the moiety extended must be set out by *metes and bounds*; I take the meaning to be, a moiety *in value*, which is ascertained by the jury” (*h*); which shows that the inquisition and return are good although separate lands have been extended, provided it does not appear that they amount in *value* to *more* than a moiety of the *whole* (*i*). Sheriff to impanel a jury, &c.

The extent and valuation of the lands, and the appraising of the goods, must be by an inquest of twelve lawful men, and not by the sheriff; although the writ speaketh of no inquisition (*k*).

In all returns of this or any other nature, the words of the writ ought to be pursued (*l*). The return to an *elegit* for a moiety of premises is bad if it do not state such moiety by metes and bounds (*m*).

Return to
an *elegit*.

The execution of this writ appears in the inquisition hereunto annexed. The answer of, &c.

The inquisition.

——, ss. An inquisition indented, taken at the house of *J. K.* called by the name or sign of the
in street, in in the said county, on the
 day of in the year of the reign
of our sovereign lord *William* the fourth, &c. before me
S. C. esq. sheriff of the said county, by virtue of His Majesty’s writ to me directed and hereunto annexed, on the oath of [*here name the twelve jurors*] good and lawful men of my bailiwick, who being sworn and charged upon their oath say, that *C. D.* in the said writ named, on the
 day of in the year of the reign of His
present Majesty, on which day the judgment in the said writ specified was given against the said *C.* * was, and on the day of taking this inquisition is seized and possessed (*n*)

(*h*) Dalt. 135. 1 Salk. 563.
Carth. 453. 1 Sid. 91. Cro. Car.
319.

(*i*) Den v. L. Abington, Doug.
475.

(*k*) 4 Co. 74. Dalt. 232.

(*l*) Dalt. 548.

(*m*) Fenny v. Durrant, 1 B.&A. 43.

(*n*) After the jury have found the parcels and appraised them, the sheriff must deliver a just moiety, according to the appraisement; if he returns more or less, it is void. Dalt. 548.

of and in the several goods and chattels following, that is to say, [*here set forth the goods*] as his own proper goods and chattels, and the said jurors do appraise and value the same at the sum of 50 *l.*, which said goods and chattels I have caused to be delivered to the said *A. B.* in the writ named, to hold to him as his own goods and chattels, in part satisfaction of the debt and damages in the said writ mentioned; and the jurors aforesaid on their oath aforesaid further say, that the said *C. D.* in the said writ named, at the time of giving the said judgment in the said writ specified, had not, nor on the day of taking of this inquisition hath, any other or more goods or chattels, or any lands or tenements, in my bailiwick, to the knowledge of the said jurors, which may or can be extended or appraised. In witness whereof, as well I the said sheriff as the said jurors to this inquisition have set our hands and seals, the day, year and place above mentioned.

* Was, and on the day of taking this inquisition is, seized in his demesne, as of fee, of and in a certain messuage or tenement, stable and brewhouse, with the appurtenances, situate, &c. in the said county, and now in the tenure or occupation of *I. S.* at the clear yearly rent of 14 *l.* in all issues beyond reprises; and also of and in a certain other messuage or tenement, situate in, &c. in the said county, in the occupation of *W. S.* of the clear yearly value of 8 *l.* in all issues beyond reprises; and also of and in a certain other messuage or tenement, yard and premises in aforesaid, now in the occupation of of the clear yearly value of 6 *l.* in all issues beyond reprises; and also of and in a certain other messuage, &c. in, &c. of the clear yearly value of 7 *l.* in all issues beyond reprises; and also, &c. of the clear yearly value of 50 *s.* in all issues beyond reprises; and also of and in a certain other small messuage or cottage adjoining to the last mentioned messuage in *S.* aforesaid, now in the occupation of of the clear yearly value of 50 *s.* in all issues beyond reprises; [*if the premises are in mortgage*, say, "which said " premises are subject to a mortgage made thereof by the " said *C. D.* to one *E. F.* of by indenture bearing " date, &c. for the term of years at the yearly rent " of one pepper-corn, subject to redemption on payment " of and interest at five per cent. per annum, at " a day now past."] And the jurors upon their said oath further say, that the said messuage or tenement, stable, brewhouse, out-building, yard, garden and premises in *S.* aforesaid, in the occupation of the said *G. H.* of the yearly value of 14 *l.* and the said messuage, yard and premises in *S.* aforesaid, in the occupation of the said *T. A.* of the

If lands and no goods taken.

yearly value of 6*l.* are a true and equal moiety of all and singular the said lands, tenements and hereditaments of the said *C. D.* in the said writ named, and which said moiety I the said sheriff, on the day of taking this inquisition, have caused to be delivered unto the said *A. B.* in the said writ named, at the reasonable price and extent aforesaid, to hold to him and his assigns as his free tenements, according to the form of the statute in that case made and provided, until the debt or damages in the said writ mentioned shall be thereout fully levied as by the said writ I am commanded; and the said jurors upon their said oath further say, that the said *C. D.* in the said writ named, at the time of the rendition of the said judgment in the said writ specified, had not, nor on the day of taking this inquisition hath any goods or chattels, or any other or more lands or tenements in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I the said sheriff as the said jurors have to this inquisition set our hands and seals, the day and year, and at the place above written.

What sheriff
may return.

The sheriff may to this writ return *nihil*, or that he hath extended the land of the defendant, but that he cannot deliver the same to the plaintiff, for that another had the same in extent before (*o*).

Exigent and Proclamation.

The writ of *exigent* commands the sheriff to cause the defendant to be *required* from county-court to county-court, or from husting to husting, if in *London*; that is, at five successive county-courts, or hustings, until he be outlawed, if he do not appear, and if he appear, to take him, &c.

If there be not *five county-courts*, or *hustings*, between the *teste* and *return* of it, there issues an *exigent de novo*, grounded upon the sheriff's return to the former writ, with a clause (from whence it is called an *allocatur exigent*) directing the sheriff to *allow the several county-courts*, at which the defendant has been already required, and demanding him again to appear. *Exigents* are to be proclaimed five county days, *one after another*, and the proclamation in open court, once in the open sessions, and once at the parish church door, where the defendant doth or lately did dwell, that he appear *and yield and answer to the law*, or *else that he shall be outlawed*; and if he appear, the sheriff is to take and imprison him; if not, he

records his default each court day; if he do not appear the fifth court day, then the coroner shall give judgment; for the form of which *see* title COUNTY-COURT, p. 207.

Upon the return of the *exigent*, it must appear that it was by the judgment of the *coroners*, (for they be judges;) otherwise it is error (*p*). And the defendant shall be called by the sheriff on the *exigent*, at five county-court days, to answer to the law, and if he come not within that time, he is to be returned outlawed.

And *no county-court ought to be omitted*; but when the proclamation begins, the sheriff ought to pursue the same at *every county after*, without omission (*q*).

No county-court to be omitted.

The return of an *exigent* shall be void, by reason of uncertainty, as where the sheriff returns the *exigent*, *quod ad comit. Lancast. tent. ibid.* &c. when it should be, *ad comitat. Lancaster, tent. apud Lancast.* (or at some other certain places, whereto *ibidem* might have relation.) So if the sheriff returneth the writ thus: At my county-court held at the —, &c. and sets not down in *what county* (*r*).

Return of an exigent, void for uncertainty.

So the sheriff returneth, that he made proclamation at his county-court, held *talio die*, and showed not what year (*s*).

If year not, the proclamation bad.

If the party brings a *supersedeas* to the *exigent*, and delivers it to the sheriff, the outlawry shall not be pronounced (*t*).

Supersedeas comes, outlawry not pronounced.

If the defendant come in at any of the five courts, the sheriff is to take and imprison him. But if he comes *not*, then the sheriff, with the assistance of *one* coroner at the least, is to pronounce him outlawed (*u*). And the sheriff to return the same.

If defendant comes in, sheriff may take him.

Upon an *exigent*, a return was made, that the party was dead, and held not good; for the sheriff hath no authority by the *exigent* but to call the party from county to county, to appear, and answer to the law, and if he appear, then to take and imprison him (*x*).

Return of party dead, not good.

The sheriff may return that the coroners were absent on the *quinto exact.* therefore he could not proceed. Or that no coroner was there but one, who refused to pronounce the outlawry (*y*).

May return coroners absent, or no coroner.

(*p*) Dalt. 236, cites 21 H. 7. 33.
Co. Litt. 288.

(*t*) Dalt. 238.

(*q*) Plo. 37.

(*u*) Finch, 346.

(*r*) Dalt. 237.

(*x*) Dalt. 239.

(*s*) 27 H. 8. Br. Ret. 3.

(*y*) Lib. Intr. 334, 335, 336.

On indictment.

Upon an indictment before justices of the peace, if the *exigent* shall be returned, *quarto exactus*, and that he cannot call the party any more for shortness of time, it seems to be a good return (z).

No county-court.

That there was no county-court held from the receipt of the writ to the day of the return (a).

When *supersedeas* may be returned.

A *supersedeas* may be returned by the sheriff before the fifth exaction to any one of the defendants in the exigent, and the exaction against the others, which the sheriff allows, and ceases to proceed against him who is superseded, by stating that he has ceased from the execution of the writ as against him who is superseded, having received His Majesty's writ for that purpose (b).

Proclamation.

c. 4.

c. 3. s. 1.

In addition to the exigent, a writ of proclamation is introduced by the 6 H. 8. But this writ is at present governed by the 31 El. which enacts,

That in every action personal, wherein any exigent shall be awarded out of any court, a writ of proclamation shall be awarded out of the same court, having day of *teste* and *return* as the said writ of *exigent* shall have, directed and delivered of record to the *sheriff of the county* where the defendant, at the *time* of the exigent so awarded, shall be dwelling; which writ of proclamation shall contain the effect of the same action. And the sheriff to whom such writ of proclamation shall be delivered, shall make three proclamations; one in *open county-court*, one other at the *general quarter sessions* of the peace in those parts where the party defendant at the time of the *exigent* awarded shall be dwelling, and one other one month at least before the *quinto exactus*, by virtue of the said writ of *exigent*, "at " or near the most usual door of the church or chapel of " that town or parish where the defendant shall be dwelling," at the time of the exigent so awarded: and if the defendant shall be dwelling out of any parish, then in such place as aforesaid, of the parish in the same county, and *next adjoining to the place of the defendant's dwelling*; and upon a *Sunday* immediately after divine service and sermon, if any sermon there be; and if no sermon there be, then forthwith after divine service; and that all outlawries had and pronounced, and no writs of proclamation awarded and returned, according to the form of this statute, shall be utterly void.

Exigent in Wales, Lancaster, Cheshire or

Whensoever any writ of *exigent* shall be awarded in any action in the *King's Bench*, or *Common Pleas*, against

(z) Crom. 149, 150.

(a) Dalt. 240.

(b) Dalt. 336.

any person dwelling in *Wales, Lancashire, or Cheshire, or city of Chester*, one writ of proclamation shall also be awarded, &c. and every sheriff, &c. shall make proclamation of the said writ of proclamation, according to the tenor thereof, and true return thereof, as the writ requires.

Chester, how
to proclaim.

1 Ed. 6. c. 10.
s. 2.

Writs of proclamation and exigent against any person dwelling within the county palatine of *Durham*, shall be directed to the bishop (or *chancellor*) of *Durham*, &c. And the said bishop, &c. shall by his mandate, directed to the sheriff of the said county-palatine, cause proclamation to be made of the same, according to the tenor of the same writ, and make returns into such courts as the tenor requires.

Durham.

31 El. c. 9.

In the hustings there are two courts, held distinctly, and having different jurisdictions, one called the hustings of pleas of land, and the other called the hustings of common pleas.

Court of hus-
tings in London.

The court of hustings is now held before the lord mayor, aldermen and sheriffs, who are the judges, and the recorder sits with them to assist, and to pronounce the judgment of the court.

Where held
before.

All judgments upon *outlawries*, in causes where the *venue* is laid in *London*, are pronounced in the court of *hustings*. The proceedings in such a case are had either in the hustings of *pleas of land* or *common pleas*, which happens first after coming of the exigent, or is most convenient to the parties; but having been begun in *one division* of the court, the *subsequent* proceedings must be continued and finished there (c). As, for instance, if you begin with *pleas of land*, you must continue them; so if you begin with *common pleas*.

As to outlawries.

The court is held on *Tuesday* in every week, (with an exception of certain feast days, on which, if they happen to fall on a *Tuesday*, it cannot be held,) and an outlawry may be completed earlier in *London* than any other county: it never happens that there are five hustings between the *teste* and return of the *exigent*.

When the
court is held.

In *London*, fourteen days between two hustings will be well (d).

At the hustings of Common Pleas, holden in the *Guïdhall* of the city of *London*, on next after the feast of in the year of the reign of His present Majesty,

Return of an
exigent in
London.

(c) Emers, 22.

(d) 2 Leon. 14.

the within-named *J. S.* was a first time demanded, and did not appear: At the hustings of Common Pleas, holden in the *Guildhall* of the city of *London* aforesaid, on next after the feast of _____ in the year above-written, the within named *J. S.* was a second time demanded, and did not appear: At the hustings of Common Pleas, holden in the *Guildhall* of the city of *London* aforesaid, on next after _____ in the year above-written, the said *J. S.* within-named, was a third time demanded, and did not appear. The answer of, &c.

Return to the
allocutur.

At the hustings of Common Pleas, holden in the *Guildhall* of the city of *London*, on _____ next after the feast of, &c. in the _____ year of his present Majesty's reign, the within-named *J. S.* was a *fourth* time demanded, and did not appear: At the hustings of Common Pleas, holden in the *Guildhall* of the city of *London* aforesaid, on next after the feast of, &c. in the year aforesaid, the within-named *J. S.* was a *fifth* time demanded, and did not appear. Therefore the said *J. S.* is outlawed. The answer of, &c.

If two persons be in the writ, you will return, that *they did not appear, nor did any or either of them appear (in each exaction).*

Return of an
exigent in
Middlesex.

By virtue of this writ to me directed, at my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, on the _____ day of _____ in the _____ year of the reign of our sovereign lord *William* the fourth, &c. the within-named *C. D.* was a first time demanded, and did not appear; and at my county-court of *Middlesex*, holden at the same place, in and for the said county, the _____ day of _____ in the year aforesaid, the said *C. D.* was a second time demanded, and did not appear; and at my county-court of *Middlesex*, holden at the same place, in and for the said county, the _____ day of _____ in the year aforesaid, the said *C. D.* was a third time demanded, and did not appear. The answer of, &c.

Must return
the day and
year of king to
every *exactus*.

The sheriff must return the *day* of the *month* and *year* of the *king* to every *exactus*; and therefore, if the day and year of the king be inserted in *first, second, third* and *fifth exactus*, but omitted in the *fourth*, it is erroneous, and shall not be supplied by intendment (*d*). So if there be less than a month between the first and second *exactus* it is erroneous (*e*). It must show where the county-court was held in each exaction (*f*).

(*d*) 2 Roll. Abr. 802. 2 Hal.
P. C. 203.

(*e*) 2 Roll. 803.
(*f*) 2 Hal. P. C. 203.

By virtue of the within writ to me directed, I caused the within-named *C. D.* to be proclaimed three several days, according to the effect of the within-mentioned statute, as I am within commanded. The answer of, &c.

Return on the writ of proclamation.

Return of proclamation that they were made as by the writ commanded, good. It need not state that the defendant did not appear (*g*).

General return good.

By virtue of this writ to be directed, at my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, the day of in the year of the reign of our sovereign lord *William* the fourth, &c. the within-named *C. D.* was a fourth time demanded, and did not appear; and at my county-court of *Middlesex*, holden at the same place, in and for the said county of *Middlesex*, the day of in the year afore-said, the said *C. D.* was a fifth time demanded, and did not appear; therefore, by the judgment of *A. B.* esq. and *J. D.* esq. His Majesty's coroners of the said county, the said *C. D.* according to the laws and customs of this realm, is outlawed. The answer of, &c. (*h*).

Return on the writ of *allocatur exigent*.

Judgment must be given by the coroners.

Before the fifth exaction of the defendant, frequently the old sheriff goes out of office, in *Middlesex*, as between *Trinity* and *Michaelmas* term, he goes out the 28th of *September*, and the return of the *allocatur exigent* is not until the 3d of *November*, therefore return the *exactions made at those courts held by the old sheriff in his name*. The answer of, &c.

Before fifth exaction, sheriff goes out of office, how to return.

Before you return the next exaction, indorse the writ thus:

New sheriff's return.

This writ, as above indorsed, was delivered to me the under-named now sheriff of the county of *Middlesex*, by the above-named late sheriff, at the time of his going out of office; and that afterwards, and by virtue of the said writ, at my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, the day of in the year of the reign of our sovereign lord *William* the fourth, &c. the within-named *C. D.* was a fifth time demanded, and did not appear; therefore, by the judgment of, &c. as before. The answer of the new sheriff.

Therefore, by the judgment of, &c. the said *Ann Doe*, according to the law and custom of this realm, is waived (*i*).

If of a woman outlawed.

If before the fifth exaction, a writ of *supersedeas* issues to the sheriff, then, upon the receipt of it, return the

Supersedeas.

Return on re-

(*g*) Barnes, 322. 4 T. R. 541.

(*i*) Dalt. 240.

(*h*) Dyer, 223. Bro. Coron. 166. 3 Inst. 212.

ceipt of *super-*
sedeas.

county-court held before the date of the writ of *super-*
sedeas received, and the exaction made, indorse on the
exigent or *allocatur* thus :

“ I have altogether ceased from executing this writ,
having received His Majesty’s writ of *super-*
sedeas for that
purpose. The answer of, &c.”

Return of she-
riffs on the writ
of *exigent*.

In *Rex v. Wilkes*, the sheriff returned the writ of *exi-*
gent executed and indorsed as follows :

By virtue of this writ to me directed, *at my county-court*,
held at the house known by the sign of
near Holborn, in the county of Middlesex, the 12th day of
July, in the fourth year of the reign of our sovereign, &c.
the within-named *John Wilkes* was the first time exacted,
and did not appear, it went on in the same manner till the
quint’ exact’, viz. at my county-court held *at the same place*
the 9th day of *August*, in the year aforesaid, the said *John*
Wilkes was a second time exacted, and did not appear,
[and so in the same words, only changing the days, to the
fifth *exclusive*.] Therefore, by the judgment of *Edward*
Umfreville, esq. and *Thomas Philips*, gent. His Majesty’s
coroners of the county of *Middlesex*, the said *John Wilkes*,
according to the laws and customs of this realm, is out-
lawed.

This return was held erroneous, for the words “ *of*
“ *Middlesex*,” should have been added immediately after
the words “ *at my county-court* ;” and the words “ *for*
“ *the county of Middlesex*,” added immediately after the
word “ *held*” (*k*).

Exigent and Proclamation on the Criminal Side.

The court of *K. B.* either upon an indictment origi-
nally taken before them, or removed thither by *certio-*
rari, may issue process of *capias* and *exigent* into any
county of *England*, upon a *non est inventus* returned by
the sheriff of the county where he is indicted, and a *testa-*
tum that he is in some other county.

Justices of gaol-delivery regularly cannot issue a *capias*
or *exigent*, because their commission is to deliver the gaol
de prisonibus in ea existentibus, so that those whom
they have to do with are always intended in custody
already (*l*).

Justices of *oyer* and *terminer* may issue a *capias* or
exigent and so proceed to the outlawry of any person in-

(*k*) 4 Burr. 2527.

(*l*) Hal. P. C. 199.

dicted before them, directed to the sheriff of the same county where they hold their sessions at common law.

But by 3 *Ed.* 1. they may issue process of *capias* and *exigent* to all counties in *England* against persons indicted or outlawed for felony before them. c. 14.

Justices of peace may make process of outlawry upon indictments taken before themselves, or upon indictments taken before the sheriff, and returned to the justices of the peace. 1 E. 4. c. 1.

The process to the outlawry, *viz.* the *capias* and *exigent*, must be in the *king's name*, and under the judicial seal of the king appointed to that court that issues the process, and with the *teste* of the *chief justice*, or *chief judge* of that court or sessions. Process must be in the king's name.

If an *exigi facias* be delivered to the sheriff, and there are but two county-courts before the return, and the sheriff return the first and second *exactus* and *non compe-ruit*, and that there were no more county-days between the delivery of the writ to him and the day of the return, there may issue a special *exigi facias*, with an *allocato comitatu*, if it be prayed after the return, and before any new county-day be past; but if any county-day *be past*, between the last of the former county-days and the return, no *exigi facias* shall issue with an *allocato comitatu*, but an *exigi facias de novo*, for the demand of the party must be at *five county-courts successively*, held one after another, without *any county-court intervening*. So if after the second *exactus* the offender render himself, and find mainprize, and at the day of the return make default, no *exigi facias* with an *allocato comitatu* shall issue, because three county-days intervened, but a *new exigent* and *capias* against the bail (*m*). If there be two county-courts only. 22 Ed. 3. 11. a.

The return of the outlawry must be certain; it must show where the county-court was held, *and in what county*, therefore *ad comitatum meum S. tent. apud C.* and says not *in comitatu prædicto* or in *com. S.* is erroneous (*n*). Return.

The sheriff must return the *day* of the *month* and *year* of the king to *every exactus* (*o*).

It is said (*p*) that the name of the coroner must be *subscribed* to the judgment of outlawry at the *quinto*

(*m*) Hal. P. C. 201.

(*o*) 2 Roll. Abr. 803. pl. 1.

(*n*) H. H. P. C. 203. 6 H. 7. 15.

(*p*) 2 Hal. P. C. 204.

11 H. 7. 10. a.

exactus (q), upon an outlawry of felony; but in *Rex v. Yandell* (r), it is said that the *names* of the persons by whom the outlawry was pronounced must be stated, but *not subscribed*: and it must also be subscribed by the name of their office, *A. B. & C. D. coronatores*, unless in *London*, where the mayor is coroner (s).

Proclamation to be issued before judgment or conviction.

4 & 5 W. 3.

c. 22. s. 4.

c. 3.

Upon issuing any *exigent* out of any of the king's courts, against any person for a criminal matter, *before judgment* or *conviction*, there shall also issue a writ of *proclamation*, bearing the same teste and return where the person in the record of proceeding is mentioned to inhabit, according to the form of 31 *El.*, which writ of proclamation shall be delivered to the sheriff *three months* before the return of the same.

Barrington's case; he was outlawed after a day given him in court, and before such day arrived.

The prisoner was outlawed on the 21st of *February*, and the writ of proclamation required the sheriffs to proclaim him, so that he should be *before the justices* of the peace at the general sessions of the peace to be holden for the county aforesaid *next after the first day of February next ensuing*: And the return by the sheriff to that writ was, that he had proclaimed the said *George Barrington* that he should be before His Majesty's justices of the general sessions of the peace *last within-mentioned*. The next sessions of the peace were holden on the 25th of *February*; so that by the terms of the writ, and by the proclamation too, the prisoner had a day given to him to appear till the 25th of *February*; and if he had appeared on *that day*, he would have complied with the requisition of that writ, and have saved his default. But he was outlawed *before that day* came, viz. on the 21st of *February*; on that ground, the court held the outlawry bad (t).

In the *King v. Yandell*, on an indictment for sheep-stealing, the sheriff's return to the exigent and proclamation was fully argued on many exceptions. The return is stated on the record on the exigent as follows, and is well drawn.

The indictment was found at the assizes for *Somerset*, on which a *capias*, *alias* and *pluries* issued, and were returned by the sheriff *non est inventus*; and a writ of *exigent* and *proclamation* also were issued to the sheriff of *Somerset*, who returned the exigent thus:

(q) *Ethrington's case*, M. 9 Car.

(r) 4 T. R. 512.

(s) 2 Roll. Abr. 802. Cro. Jac. 531.

(t) *R. v. Barrington*, 3 T. R. 499.

"I do hereby certify to the justices of our lord the king of oyer and terminer within mentioned, that this writ was delivered to me on _____ in the _____ year of the reign of our sovereign lord _____ &c and that after the receipt of the said writ, and by virtue thereof, at my county-court of *S.* holden at *I.* in and for the county of *S.* within written, on _____ the within-named *J. Y.*, *J. Y.* and *J. Y.* were first called, and did not appear, nor did any or either of them appear: And that afterwards, at my county-court of *S.* holden at *I.* in and for the said county of *S.* on _____ the within-named *J. Y.*, *J. Y.* and *J. Y.* were a second time called, and did not appear, nor did any or either of them appear. The answer of *G. T.* sheriff of the county of *S.*

Return of the
exigent of the
late sheriff.

I do hereby certify to the justices of our said lord the king of oyer and terminer, within mentioned, that this writ as it is above indorsed, was delivered to me, the under-named present sheriff of the county of *S.*, by the above-named late sheriff, at the time of his going out of his office; and that afterwards, by virtue of the said writ, at my county-court of *S.*, holden at *I.* in and for the county of *S.* within written, on _____ the within-named *J. Y.*, *J. Y.* and *J. Y.* were a third time called, and did not appear, nor did any or either of them appear. The answer of *I. S.* esq. sheriff of the said county of *S.*

The return of
the present
sheriff.

I do hereby certify to the justices of our lord the king of oyer and terminer within mentioned, that this writ was delivered to me on _____ and that after the receipt of the said writ, and by virtue thereof, at my county-court of *S.* holden at *I.*, in and for the county of *S.* within written, on _____ the within-named *J. Y.*, *J. Y.* and *J. Y.* were a fourth time called, and did not appear, nor did any or either of them appear: And that afterwards at my county-court of *S.*, holden at *I.*, in and for the county of *S.*, on _____ the within-named *J. Y.*, *J. Y.* and *J. Y.* were a fifth time called, but did not appear, nor did any or either of them appear. Therefore, by the judgment of *D. S.* gent. and *P. L.* gent. coroners of our said lord the king of the said county of *S.* and according to the laws and customs of *England*, the said *J. Y.*, *J. Y.* and *J. Y.* are outlawed, and each of them is severally outlawed. The answer of *J. S.* sheriff of the said county of *S.*"

Return to
the *allocatur*.

The names of
the coroners
need not be
subscribed.

I do hereby certify to the justices of our lord the king of oyer and terminer within mentioned, that this writ was delivered to me on _____; and that after the receipt of the said writ, and by virtue thereof, at my county-court of *S.* holden at *I.* in and for the county of *S.* within-written,

Return to the
first writ of pro-
clamation by the
late sheriff.

on I caused the first proclamation to be made in open court, in the said county, that the within-named *J. Y.*, *J. Y.* and *J. Y.* should render themselves to me, so that I might have their bodies before the justices of our lord the king within-written, at the next assizes, and general session of oyer and terminer and gaol delivery, to be holden for the said county, to answer our said lord the king concerning certain felonies whereof they are indicted, as by this writ I am commanded; and the within-named *J. Y.* *J. Y.* and *J. Y.* are not, nor are any or either of them found in my bailiwick. The answer of *G. T.* esq. sheriff of the county of *S.*

The answer of
the present
sheriff.

I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ, as it is above indorsed, was delivered to me, the under-named present sheriff of the county of *S.* by the above named late sheriff, at the time of his going out of office. The answer of *J. S.* esq. sheriff of the said county of *S.*

Return to
second procla-
mation.

I do hereby certify to the justices of our lord the king of oyer and terminer within-mentioned, that this writ was delivered to me on _____ and that after the receipt of the said writ, and by virtue thereof, at the general quarter sessions of the peace of our lord the king, holden for the county of *S.* at _____ in the said county, on _____ I caused the second proclamation to be made in open court, that the within-named *J. Y.* *J. Y.* and *J. Y.* should render themselves to me, so that I might have their bodies before the justices of our lord the king within-written, at the next assizes, and general sessions of oyer and terminer and gaol delivery, to be holden for the said county, to answer our said lord the king concerning certain felonies whereof they are indicted, as by this writ I am commanded; and that afterwards, at the most usual door of the church of the parish of _____ within-mentioned, on *Sunday*, the _____ immediately after divine service and sermon, one month at least before the within-named *J. Y.* *J. Y.* and *J. Y.* were a fifth time called, by virtue of a certain writ of exigent of our said lord the king, I caused the third proclamation to be made, that the within-named *J. Y.* *J. Y.* and *J. Y.* should render themselves to me, so that I might have their bodies before the justices of our said lord the king within-written, at the next assizes to be holden for the said county, to answer our said lord the king concerning certain felonies whereof they are indicted, as by this writ I am commanded: and the within-named *J. Y.* *J. Y.* and *J. Y.* are not, nor are any or either of them, found in my bailiwick. The answer of *J. S.* sheriff of the said county of *S.*

It is *not* necessary that the sheriff add to his return to each proclamation that the prisoners *did not appear* (u). But it is necessary to the return of the exigent (x).

The return of these proclamations were held to be good (y).

There was an objection to the return of the *exigent*, that the *names* of the coroners by whom the outlawry was pronounced were not *subscribed* to the record. The court said, by law it is necessary that it should appear by *whom* the outlawry was pronounced, and that they had authority to pronounce that judgment. It was never contended that the coroners must *sign the judgment* with their own hands. It does appear on the record by whom the outlawry was pronounced, and that they were the coroners, and consequently had authority to pronounce that judgment (z).

In the *King v. Almon*, the return to the writ of *exigent* was (after stating the two first exactions), afterwards at the husting, &c. on *Monday* next before the feast of the *Saints Perpetua* and *Felicitas*, &c. in the thirtieth year aforesaid, we caused to be exacted the said *J. Almon*, and he did not appear; and “afterwards at the husting, &c. on *Monday* next before the feast of *St. Edward* the king, “we caused to be exacted the said *J. Almon*, and he did “not appear;” and afterwards at the husting, &c. on *Monday* next before the feast of the *Saints Tibercius* and *Valerianus* in the thirtieth year aforesaid, we caused to be exacted the said *J. Almon*, and he did not appear, &c. Therefore, &c. The omission of the *year of the reign*, when the defendant was a *fourth* time exacted, was assigned for error, and the judgment reversed. For in a record of *outlawry* it is necessary to state the *year of the king's reign*, in which *every* transaction happened, though not required in other records (a).

Buller, J. said, there is neither sense nor reason in the objection; but according to the authorities it must prevail (b).

At my county-court of *Middlesex*, holden at, &c. in and for the said county of *Middlesex*, on the day of in the year of the reign of our sovereign lord

(u) 4 T. R. 541.

(x) 2 H. P. C. 204.

(y) 4 T. R. 541.

(z) Ib 541, 542.

(a) *Buller, J. vide Hardres*, 6, 7. Crosse's case. 5 T. R. 202.

(b) 2 Roll. Abr. 808. pl. 8. is this case, 2 Hal. P. C. 203.

(c) Dalt. 238.

The day and year must be stated, if not it is error.

Fourth exaction.

If he appear and render (c).

William the fourth, &c. the within-named *C. D.* was a first time demanded and appeared, and on the aforesaid day rendered himself into the prison of our said lord the king of *Newgate*, in the county aforesaid, under my custody, whose body I have ready before the lord the king, at the day and place within-mentioned, as within I am commanded. The answer of, &c.

To writs of Extent.

King's debt to be preferred.

33 H. 8. c. 29.

King's judgment affects all lands of his officers.

c. 4.

The king's debt shall, in suing out execution, be preferred to that of every other creditor who hath not obtained judgment before the king commenced his suit. The king's judgment affects all lands which the king's debtor hath at or after the time of contracting his debt, or which any of his officers, mentioned in 13 *El.* hath at or after the time of his entering in the office. So that if such officer of the crown aliens for a valuable consideration, the land shall be liable to the king's debt, even in the hands of a *bonâ fide purchaser*; though the debt due to the king was contracted by the vendor many years after the alienation (*d*).

This preference can only be defeated by the property being altered by sale and delivery of the goods seized under the execution of the subject (*e*).

And in this respect there is no distinction between an extent in chief, and an extent in aid (*f*).

Immediate extent tested after distress.

An immediate extent against the king's debtor tested after a distress for rent taken, although justly due to the landlord, and an appraisement of the goods and chattels made, but not sold, shall prevail against the distress (*g*).

Extent on day of assignment.

So shall an extent tested on the day of the date of an assignment under a commission of bankrupt (*h*).

By sale the execution is complete; and process of the crown delivered afterwards to the sheriff, though before the money is paid over, is no longer entitled to priority (*i*).

The crown process is not affected by the 56 *Geo.* 3. so as to subject crops sold to any conditions in the lease.

What may be seized.

Debts either by specialty or simple contract may be found and seized into the king's hands to the third degree, but not beyond (*k*).

(*d*) 10 Rep. 55, 56.

(*e*) R. v. Sloper, 6 Pri. 114.

(*f*) *Ib.*

(*g*) Parker's Rep. 112.

(*h*) *Ib.* 126, 127.

(*i*) Swain v. Morland, 1 Br. & B. 370.

(*k*) Parker's Rep. 259, 260.

The property in bills is not transferred by indorsement alone without delivery (*m*). So where an arrangement had taken place as to bills with creditors, but no specific appropriation, and being seized by the crown, it was held that the trustees could not sustain the issue, as against the crown, that the bills were their property (*n*).

Immediate extents shall be preferred according to the teste, and before extents in *aid* (*o*). And a second immediate extent, upon which evidence was offered to find the goods seized in *aid*, shall be preferred to a *prior immediate extent*, not offering such evidence (*p*).

If execution be upon a judgment against the king's debtor, and before a *vend. exp.* an extent comes at the king's suit, those goods cannot be taken on an extent (*q*).

The 33 H. 8. enacts,

That the king's suits or process for recovery of his debts shall be preferred before the suit of any other person, so always that the king's said suit shall be taken or commenced, or process awarded for the said debt at the king's suit, before judgment given for the said other person or persons (*r*).

This statute is construed thus, that the former part of it is declaratory of the old prerogative law, the latter a new restriction of it, so that it shall not take place after judgment given for the subject (*s*).

Upon an extent on a statute-staple, the sheriff returned the extent of the lands, and not of the goods, yet good (*t*).

He may return *non est inventus*, and that he hath no goods or lands, or *cepi corpus*.

Or that none came to receive the land (*u*).

That the debtor is a clerk (*x*). Also, upon this writ, the sheriff may return, that he cannot make execution, for that another hath those lands in execution by force of an *elegit*, or that another is in by descent, or on trust for that they are not to be put out of possession without a *sci. fa.* (*y*)

Immediate extents to be preferred to extents in aid.

If execution, and before *vend. exp.* an extent comes, cannot take those goods.
c. 39. s. 74.

Construction.

Return of lands, and not of goods.

May return *non est inventus*.

Debtor, clerk. May return he cannot make execution, &c.

(*m*) Rex v. Lambton and others, 5 Pri. 428; and see R. v. Burn, Ib. 173. Rep. 260. 262. Hard. 27. 2 Rol Abr. 159.

(*n*) R. in aid Andrews v. Hunter, 4 Pri. 258.

(*o*) Ib. 281.

(*p*) Ib. 282.

(*q*) 2 Bl. Rep. 1294. Parker's

(*r*) Sed vide 1 East. 338.

(*s*) 2 Bl. Rep. 1295.

(*t*) Br. Tra. 438.

(*u*) Lib. Intr. 596.

(*x*) Dalt. 23.

(*y*) Fitz. Ret. 112, Exec.

Extended the lands, but not delivered, bad.

Upon an *extendi facias*, on a statute-merchant, the sheriff returned that he had extended the lands, but did not return that he had delivered them to the plaintiff; whereupon it was moved that the sheriff should be amerced (z).

Extent to be by inquisition.

An *extent* ought always to be by inquisition, and the sheriff without an inquisition cannot execute it (a).

If debtor have no goods, body taken.
13 E. 1.

If the debtor have no moveables whereupon the debt may be levied, then shall his body be taken and kept in prison until he hath made an agreement, &c.

If taken, to be delivered with lands.

And so soon as the debt is levied, the body of the debtor shall be delivered with his lands (b).

May return extended lands, &c.

The sheriff may return that he hath extended the land of the defendant, but that he cannot deliver the same, for that another had the same in extent before (c).

But if he once have possession of the defendant's goods, and return them, he shall be responsible (d).

As to the Writ, and how the Sheriff is to proceed.

What the sheriff is commanded to do.

By this writ the sheriff is commanded to take the body of the defendant, and also to seize his goods and chattels, lands and tenements, which were in his hands at the time of the debt being due, or after, which are to be appraised to the full extended value, before he delivers them (e).

To summon a jury if he takes goods.

If he take goods, &c. in his hands, he is to summon a jury thereon of twelve men, who, upon an appraisement being taken, find the value, as also what other goods, lands, &c. he had at the time the defendant was indebted to the king, or at any time since; when the jury have found the facts, the sheriff returns the writ, with the inquisition annexed, to the court of Exchequer, who issue out a *venditioni exponas* for sale of such goods seized. There is always evidence laid before the jury to find on this writ.

Where goods seized under an extent were of a fluctuating value, and might be injured by the dampness of the place where kept, and it was for the benefit of the parties entitled, the court directed a *vend. exp.* upon the

(z) Fitz. Exec. 38. 73. 117.

(c) Dalt. 125.

(a) Cro. Jac. 566. pl. 9.

(d) R. v. Kinneer, 3 Pri. 536.

(b) 4 Co. 67.

(e) F. N. B. 131.

terms of satisfying the debt claimed under the extent, and 100*l.* beyond (*f*).

You shall well and truly inquire what lands and tenements, and of what yearly value, *C. J.* had in my bailiwick on the day of in the year of the reign of His present Majesty, on which day he was found indebted to His Majesty, or at any time since, and what goods and chattels, and of what sorts and values, and of what debts, credits, specialties and sums of money, the said *C. J.* or any person or persons, to his use, or in trust for him, now hath or have in my said bailiwick, and that you appraise such goods and chattels, so that I may extend, seize and take the same into His Majesty's hands, until His Majesty shall be fully satisfied the sum of 1,000*l.* due to His Majesty upon an extent directed to me, tested the day of in the year of his reign. So help you *God*.

The oath of a juryman.

Take the words of the writ.

Great care is to be taken on the return of the inquisition, as if lands are taken by the sheriff, houses, &c. that they be properly described, and how they came to be the defendant's property. The like if leases are seized. So if debts due to the defendant, either for goods sold, money lent, or had and received to his use. If bills or notes are seized and taken, there must also be particularly inserted their dates, by whom drawn or indorsed, and how they became the property of the defendant.

Care to be taken on the return.

Indorse on the extent thus:

“ The within named *I. B.* is not found in my bailiwick. The residue of the execution of this writ appears in the inquisition hereto annexed. The answer of, &c.

Return to the extent.

——— } An inquisition indented, taken at the house
to wit. } of *I. L.* known by the name or sign of
in the borough of in the said county, the
day of in the year of the reign of our sovereign lord *William* the fourth, &c. bef re me, *T. S.* esq. sheriff of the said county, by virtue of His Majesty's writ of extent to me directed, and to this inquisition annexed, on the oath of *A. B.* [*here name the twelve jurors*] honest and lawful men of my bailiwick, who being sworn and charged on their oath say, that *I. B.* in the said writ named, on the day of in the year aforesaid, was, and at the time of taking this inquisition is, possessed of the goods and chattels following; that is to say, [*here state the goods taken from the inventory*] as of his own goods and chattels, and the said jurors do appraise and value the same at the sum of 30*l.*, all which said goods and chattels I the said

The form of the inquisition.

The teste of the writ.

(*f*) *R.* in aid, &c. *v.* *Cripps*, 3 Pri. 696.

C C

sheriff have seized and taken into His Majesty's hands : And the jurors aforesaid, upon their oath aforesaid, further say, that *C. D.* of, &c. made a note in writing, bearing date, &c. and thereby after the date of the said note, promised to pay the said *I. B.* or his order, the sum of for value received, whereby, and by force of the statute in that case made and provided, he became liable to pay to the said *I. B.* the said sum of money in the said note specified, according to the tenor and effect of the said note ; and that *U. P.* of, &c. is indebted to the said *I. B.* in 20*l.* upon the balance of accounts ; and that *R. C.* of, &c. is indebted to the said *I. B.* in 50*l.* for goods sold and delivered to the said *R. C.* [*here state who are indebted, and for what*] ; all which said debts, sum and sums of money, I the said sheriff have taken and seized into His Majesty's hands : And the jurors aforesaid, upon their oath aforesaid, further say, that the said *I. B.* on the day of issuing the said writ was, and on the day of taking this inquisition is, seised in his demesne as of fee, of and in a certain messuage or tenement, with the appurtenances thereto belonging, situate and being in street, in the parish of *C.* in the said county, and in the possession of *Rich. Fenn*, of the clear yearly value of 40*l.* in all issues beyond reprises, which I the said sheriff have seized and taken into His Majesty's hands ; and that the said *I. B.* hath not any other or more goods or chattels, debts, credits, specialties or sums of money, or any other or more lands or tenements in my bailiwick, to the knowledge of the said jurors, which can be extended, appraised or seized into His Majesty's hands : In witness whereof, as well I the said sheriff, as the said jurors, to this inquisition have set our seals, the day, year and place above-mentioned.

A return upon an extent that he has delivered such lands, if it does not say that there are no other lands, is bad (*g*).

May return *cepi*.

The sheriff may return *cepi corpus*, and the seizure of the lands, &c. (*h*)

Non est inventus,
&c.

He may also return *non est inventus, nec habet bona, nec habet terras* (*i*).

Poundage on Extents, &c.

c. 15.

Allowance to
sheriff on levy-
ing debts, &c.

By stat. 3 *Geo.* 1. it is enacted,

“ That all sheriffs who shall levy any debts, duties or sums whatsoever, *except post fines*, due to the king's majesty, his heirs or successors, by process to them directed

(*g*) *Brown.* 37.

(*h*) *Dalt.* 233.

(*i*) *Ib.* 234.

upon the summons of the pipe, or green wax, by *levari facias* out of the court of *Exchequer*, shall have an allowance of 12*d.* out of every 20*s.* for any sum not exceeding 100*l.* levied or collected; and 6*d.* only for 20*s.* above the first 100*l.*; and for all debts, &c. (*except post fines*) due to His Majesty, &c. by process of *feri facias* and *extent*, issuing out of the court of *Exchequer*, 1*s.* 6*d.* out of every 20*s.* not exceeding 100*l.* levied; and 12*d.* only for every 20*s.* over and above the first 100*l.*: provided that such sheriff shall answer the same upon his account by the general sealing-day of such term in which he ought to be dismissed the court, or in such time to which he shall have a day granted to finish his said accounts, by warrant signed by the lord chief baron, or one of the barons of the coif of the said court, for the time being. (except post fines) due to the crown.

s. 3.

That when any sheriff shall, by process out of the *Exchequer*, seize or extend any goods, &c. into the hands of His Majesty, for any debts due to the crown, and shall die, or be superseded before a writ of *renditioni exponas* be awarded to him for sale, or before such sheriff hath made actual sale, and a writ shall afterwards be awarded to a subsequent sheriff, who shall make sale, &c. of such goods, &c. so seized by such preceding sheriff, in case the barons of the *Exchequer*, if then sitting, and if not sitting, the said barons, or any one of them, being of the degree of the coif, shall order and apportion poundage due for such seizure and sale, betwixt such preceding and subsequent sheriffs, as to him or them shall seem meet, with regard to the expense and trouble each sheriff hath had or shall have in the execution of the said process.

When a sheriff by *Exchequer* process seizes goods for the king's debts, and dies, &c. the *Exchequer* may settle fees between precedent and subsequent sheriff.

s. 9.

No sheriff, &c. in levying debts due to the crown by process out of the *Exchequer*, shall take any fee on pretence of such levying, &c. (*except 4d.* for an acquittance), which such officer is to give to the person on whom such debt, &c. is levied, and the bailiff, &c. receiving such debt, &c. shall account for the same to the sheriff, and may require an acquittance from such sheriff without fee; from which debts the sheriffs shall discharge the debtors, by totting and answering the same on their accounts in the *Exchequer*; and if any sheriff, &c. shall *nihil*, or not duly answer the crown any debt so levied, he shall forfeit treble damages to the party grieved, and double the sum which shall be decreed to the party grieved by the court, on complaint and proof of such abuse before the barons, in such summary way as to them shall seem meet; and if any sheriff, &c. shall demand any money from any person from whom any debt is payable to the crown by process out of the *Exchequer*, on pretence of executing the process, or in

Not to take fees for levying the king's debts.

s. 13.

Extortion.

respect of fees due for collecting the same; or if any one of the officers aforesaid shall demand any sum for forbearing to levy such debts written out to them by the said process, every such offender shall be adjudged guilty of extortion, and being convicted, shall forfeit treble damages and costs to the party grieved, and double the sum extorted, to be decreed by the barons on complaint and proof in a summary way; provided such conviction be within *two years* after the offence.

But *semble*, the taking a remuneration for dividing the property taken into lots, for the party's benefit, would not be extortion (*k*).

And if a sheriff, &c. shall *nichil*, or not answer such debts collected, he forfeits treble damages, &c.

And in what cases sheriff or officer is guilty of extortion.

And in case any sheriff, &c., shall *nichil*, or not duly answer to the crown any debt or sum so levied, collected or received, such sheriff, &c., for every such offence, shall forfeit treble damages to the party grieved, and double the sum so *nichilled* or not duly answered as aforesaid; which damages and penalty shall be ordered, decreed and given to the person grieved by the court of *Exchequer*, upon complaint and proof of such abuse as aforesaid made and exhibited before the barons of the said court, in such short and summary way and method as to them shall seem meet. And in case any sheriff, &c., shall presume to demand, take or receive any sum of money of any person whatsoever, from whom any debt is or shall be due and payable to the crown, by process out of the court of *Exchequer*, for or in respect, or upon pretence of fees for collecting or receiving the same, contrary to this act; or if any of the officers, &c., shall demand, take and receive any sum for not levying or forbearing to levy any debts, &c., which are or shall be due to His Majesty, and written out to them, or any of them, by the process aforesaid, in every such case, every person so offending, and convicted, shall be adjudged guilty of extortion, and all persons, being thereof lawfully convicted, shall forfeit for every such offence treble damages and costs to the party grieved, and double the sum so extorted, which shall be ordered, decreed and given by the barons of the *Exchequer*, on complaint and proof made and exhibited before them, in such short and summary way and method as to them shall seem meet; provided such conviction be had and made within *two years* after such offence committed.

s. 14, 15.

But the sheriff may take such poundage as given by this act, for any

Provided that nothing shall be construed to deprive any sheriff of such poundage or allowance as is allowed and given to them by this act, or of such poundage, allowance or reward as may hereafter be made, allowed and given to

(*k*) *Stevens v. Rothwell*, 3 Brod. & B. 143.

them, by warrant or order from the lord high treasurer or commissioners of the Treasury, chancellor of the Exchequer, or barons of the court of Exchequer for the time being, for or in respect of any extraordinary service to the crown that may happen to be performed by them: but that the said sheriffs shall and may enjoy the full benefit and advantage of such poundage, allowance and reward, without any impeachment or molestation whatsoever.

extraordinary service performed by him.
s. 15.

That whatsoever orders or decrees shall be made by the barons, for costs, damages and penalties, in the cases aforementioned, or of any of them, or in any other case in this act hereafter mentioned, by virtue of this act, in such short and summary way and method as is before directed and prescribed, shall have the same effect as any other order or decree of the same court; and the same costs, damages and penalties shall be raised, levied and obtained, by such process, ways and methods as are used in the said court to enforce a compliance with any other orders or decrees of the same court.

All orders made by the barons for costs, &c. in a summary way, to have the same effect as any other order of the court.
s. 16.

The court will refer it to the remembrancer to ascertain the sheriff's extra costs, under 3 *Geo.* 1, but cannot order the costs of the reference or application (*l*).

c. 15.

Poundage was allowed the sheriff out of 100*l.* fine (imposed after conviction on indictment of battery in *K. B.*) levied upon a *fi. fa.*, because the barons always make such allowance after monies paid there (*m*).

Poundage was allowed out of 100 *l.* fine.

But the sheriff cannot levy his poundage and other incidental expenses under an extent on a simple contract debt (*n*).

The sheriff may retain the poundage, without waiting for the allowance of it, upon his account (*o*).

May retain poundage.

Vide *ante*, page 150, for more concerning Poundage.

To Writs of Inquiry.

This writ is directed to the sheriff of the county where the action is laid,

The sheriff's command by the writ.

“To inquire by a jury what damages the plaintiff hath sustained by means of the premises mentioned in the writ.”

On this writ the sheriff is to summon a jury of twelve men, who are to find such damages, and he returns the writ and inquisition so found to the court.

To summon a jury.

(*l*) R. in aid, &c. v. Fereday, 4 Pri. 131.

(*n*) R. in aid, &c. v. Tidmarsh, 5 Pri. 189.

(*m*) Skin. 12. pl. 13. 2 Jones, 185. (o) Bunb. 303. Parker's R. 177.

And the court are as much bound by his notes as by the report of a judge on motion for a new trial (*p*).

Oath to the foreman.

You shall well and truly inquire and assess the damages between the parties, and a true verdict give according to the evidence. So help you *God*.

To the rest of the jury.

The same oath the foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part. So help you *God*.

What proof.

If a writ of inquiry issues upon confession of the action in trespass for taking goods, the plaintiff need not prove property of the goods, but only the value (*q*).

Fraud not to be given in evidence.

Defendant shall not give evidence of a fraud, for he has admitted the contract as stated (*r*).

In *indebitatus assumpsit* the plaintiff must prove his debt (*s*).

Need not prove hand writing to bills.

On promissory note or bill he *need not prove the hand-writing*, but it should be produced to see if any money is indorsed as paid off (*t*).

Nor to any contract in writing declared on.

So it was ruled, that if the plaintiff declare on any contract in writing made by defendant, the hand-writing need not be proved on inquiry, for by the judgment he admits the contract as stated, but the contract must be produced.

No assets.

Executors or administrators shall not give in evidence that they have no assets (*u*).

Interest.

The jury may give interest on a note, bill of exchange, and money lent (*x*).

Policy of insurance, what need be proved.

In an action on a policy on a foreign ship, when there is a stipulation that the policy shall be sufficient proof of interest, if there is judgment by default, the plaintiff on the writ of inquiry need only to prove the defendant's subscription to the policy, without giving any evidence of interest. In this case defendant had underwritten 300*l*. and jury gave the whole without proof of the amount or value, or any evidence except the hand-writing of defendant to the policy. In cases where there is no necessity for a writ of inquiry, that proceeding is of use when the plaintiff goes for interest, which the jury assesses in the name of damages (*y*).

(*p*) *Elliott v. Nicklin*, 5 Pri. 641. (*t*) 3 Wils. 155. Stra. 1149.

(*q*) Stra. 612.

(*u*) Mod. Cas. 308.

(*r*) *Ib.* & Yelv. 152.

(*x*) Barnes, 228.

(*s*) 1 Vent. 347.

(*y*) *Thelluson v. Fletcher*, Dougl. 315.

If a deputy is appointed to execute a writ of inquiry, Deputy to be appointed under seal. it must be under the seal of office (z). A verbal appointment is bad (a). Two cannot be appointed for this purpose.

This is an inquest of office to inform the conscience of the court, who if they please may themselves assess the damages (b). Inquest of office.

Upon a writ of inquiry directed to the sheriff, he cannot say *mandavi ballivo*, &c. for he is to execute it at any place within his county (c). *Mandavi ballivo* bad.

The sheriff may adjourn the writ of inquiry for want of evidence (d). Adjournment.

———, ss. An inquisition indented, taken at the house of ——— called or known by the name or sign of ——— in the said county, on the ——— day of ———

in the ——— year of the reign of our sovereign lord *William* the fourth, &c., before me *A. B.* esq., sheriff of the county aforesaid, by virtue of the king's writ to me directed, and to this inquisition annexed, on the oath of *A. B.* and *C. D.* &c. [*here set out the names of the twelve jurors*] honest and lawful men of the said county, who being sworn and charged on their oath say, that *R. F.* in the said writ named, by reason of the premises in the said writ mentioned, hath sustained damages, besides his costs and charges, about his suit in that behalf laid out, to 100*l.* and for those costs and charges to 20*s.* In witness whereof, as well as I the said sheriff, as the said jurors, have set our seals, the day, year and place above mentioned.

Indorse on the writ thus :

The execution of this writ appears on the inquisition hereto annexed. The answer of, &c. Return.

———, } An inquisition, &c. [*as before*] good and lawful to wit. } men of my bailiwick, upon their oath say, that there was due and owing from the within-named *A. B.* to the said *C. D.* for the rent aforesaid, at the time in the said *avowry* mentioned, and of the distress taken, the sum of 20*l.*; and that the goods and chattels distrained as in the writ to this inquisition annexed mentioned, according to the value thereof, are worth to be sold the sum of 40*l.* and they assess the damages of the said *C. D.* by means in the said writ mentioned, besides his costs and charges about his suit in that behalf laid out, to the sum of 40*l.* and for his costs and charges aforesaid to the sum of 20*s.* In witness, &c. Return to an inquiry in replevin, upon the 17 Car. 2. When the goods are inanimate, say, "worth" so much; if animate, of the "price of 20*l.*"

(z) Barnes, 232.

(a) Ib. 413.

(b) 2 Wils. 372. 374. 3 Wils. 61, 62. 175. 2 Saund. 107, n. 2.

(c) Hob. 83.

(d) Stra. 1259. Cas. K. B. 571.

The execution of this writ appears in the inquisition hereto annexed. The answer of, &c.

Inquisition taken before chief justice of the C. P.

Middlesex, } An inquisition indented, taken at *Westminster* to wit. } *Hall*, in my county, in the great hall of pleas there, on, &c. before me Sir *R. T.* knt. and *B. C.* esq. sheriff of the said county, by virtue of the king's writ to me directed, and to this inquisition annexed, in the presence of Sir _____ His Majesty's chief justice of the bench, in the said place where the said court is usually holden there, on the oath of [*the same as in others*].

Sheriff judge on a writ of inquiry.

It is laid down, that the sheriff is the judge on a writ of inquiry, and the judge his assistant, and the judge hath no judicial power (*e*).

Inquisition where both nominal and real damages are given.

Who upon their oath say, that the said *A. B.* in the said writ named, hath sustained damages by the non-performance of the promises and undertakings in the first and second counts in the said writ mentioned, to the sum of 10 *l.* and by the non-performance of the promises and undertakings other than the said first and second counts, to the sum of 1 *s.* besides, &c.

Writs of inquiry on 8 & 9 W. 3. c. 11.

Writs of inquiry on stat. 8 & 9 *W.* 3, are executed before the chief justice, or justices of assize, who return the writ and inquisition, for which see *Tidd's App.* 165.

Of Inquisitions.

What ought to be returned.

The sheriff in all inquisitions taken and returned by him, must therein set down the certainty of the year, day and place of taking the inquisition.

Return ought to be certain.

If the writ appoints that the inquest shall be taken at a day or place certain, the sheriff must return that it was taken the same day and place (*f*).

To make inquiry of twelve men.

In every case the sheriff ought to make his inquiry by twelve men at the least; and when the jury have appeared, he must swear them, and then give them their charge, *scilicet*, to make inquiry according to the writ (*g*).

Sheriff may return the jurors departed before verdict.

And after the charge given, if any of the jury shall depart without giving up their verdict, the sheriff may return that the jurors were charged before him, and that afterwards such of the jury or jurors departed in despite of the court, without giving up their verdict; and such return is good, and an attachment will thereupon go out against the jurors (*h*).

(*e*) 12 Mod. 519. 610. Barnes, 135.

(*g*) Dalt. 260.

(*f*) Fitz. Rep. 64.

(*h*) Thes. Brev. 5. Attach.

And all inquisitions made by the sheriff must be by writing indented. To be in writing.

And if upon an inquisition any doubt shall arise, &c. the sheriff may return, that he and the jury were in doubt, showing wherein, and so pray the advice of the court thereon (*i*). If any doubt arise, what sheriff may return.

The *sealing* of the inquisitions on writs of inquiry now are disused by the sheriff and jurors, because by the 18 *Eliz.* it is enacted, Sealing of the sheriff and jurors now disused.

“ That a verdict of twelve *men*, or more, shall not be reversed for or by reason of any imperfect or insufficient return of any sheriff or other officer.” c. 14.

And by 4 & 5 *Anne*, it is enacted, c. 16. s. 2.

“ That all the statutes of jeofails shall be extended to judgments which shall at any time afterwards be entered upon confession, *nil dicit*, or *non sum informatus*, in any court of record; and no such judgment shall be reversed, nor any judgment upon any writ of inquiry of damages executed thereon be reversed by reason of any imperfection, omission or defect, which would have been cured by any one of the statutes in jeofails, in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill and warrant of attorney duly filed.”

Of Writs of Trial, under 3 & 4 W. 4, c. 42.

By 3 & 4 *W. 4*, c. 42, writs of inquiry issued under 3 & 9 *W. 3*, c. 11, are directed to be tried before the sheriff, instead of the justices of assize or *nisi prius*, unless the court or a judge shall otherwise order; and in all actions for any debt or demand not exceeding 20*l.*, the court or a judge may direct the issue to be tried before the sheriff, or any judge of any court of record for the recovery of debt in such county, and for that purpose a writ shall issue commanding him to try such issues, and thereupon the sheriff shall summon a jury and proceed to try such issues: and upon the return of any such writ of inquiry, or writ for the trial of such

(*i*) Dalt. 260.

issues, costs shall be taxed and judgment signed and execution issued forthwith, unless the sheriff or his deputy shall certify that judgment and execution shall be stayed until the defendant shall have had an opportunity of applying for a new trial or writ of inquiry, the verdict to be of like force as of a jury at *nisi prius*, and the sheriff or deputy to have the like powers of amending as a judge at *nisi prius*.

By s. 19, the provisions of 1 W. 4, c. 7, are extended to such writs of inquiry and issues; and by s. 20, sheriffs are bound to name a deputy residing or having an office within one mile from the *Inner Temple Hall*, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting rules and orders to be made on or touching the execution of any process or writ to be directed to such sheriff.

It has been held, that the statute gives no power to the sheriff or inferior judge to certify, so as to deprive a plaintiff of costs⁽¹⁾.

And where the jury gave 20*l.*, and 10*s.* for interest, the verdict held bad, unless there were a *remittitur* of the 10*s.*⁽²⁾.

The sheriff has the same power of directing a nonsuit as a judge at *nisi prius*, but the cause of action is restricted to debt on demand⁽³⁾.

So, as to directing amendments.

And unless the party proceed to trial within a reasonable time, the court will grant judgment as of nonsuit⁽⁴⁾.

The court will compel the sheriff to transmit his notes taken on the trial⁽⁵⁾.

But the course is now to verify the notes by affidavit⁽⁶⁾.

If judgment be signed in vacation, application may

(1) *Wardroper v. Richardson*, 1 Ad. & Ell. 75.

(2) *Burleigh v. Kingdon*, 2 Dowl. P. C. 351.

(3) *Watson v. Abbott*, 2 Cr. & M. Ex. 150.

(4) *Mullins v. Bishop*, 2 Dowl. P. C. 557.

(5) *Metcalf v. Perry*, 2 Dowl. P. C. 589.

(6) *Stephens v. Pell*, 1b. 629; *Grainge v. Shoppee*, 1b. 644.

nevertheless be made to vacate and arrest the judgment⁽⁷⁾.

The rule as to the not granting a new trial where the verdict is under 20*l.* is not applicable to such trial⁽⁸⁾.

Fieri Facias.

I must refer the reader for the particulars respecting the execution of this writ to p. 114, and for the sheriff's fees to p. 150.

The returns commonly made by the sheriff to a *fi. fa.* are, 1. *Nulla bona*, which is either general, that the defendant has no goods in his bailiwick whereof he can cause to be made the sum directed to be levied; or special, with this addition, that the defendant is a beneficial clerk, having no lay fee within his bailiwick: 2. *Fieri feci*, or that the sheriff has caused to be made of the defendant's goods and chattels the whole or a part of the money, which he has ready to be paid to the plaintiff: 3. That he has taken goods of the defendant, which remain in his hands for want of buyers. Usual returns.

As to Return of Nulla Bona.

A *fi. fa.* was delivered to the sheriff the 5th *December*, who levied; on the 8th, a commission of bankrupt issued against the defendant, and on the same day a general assignment of his effects was made; on the 28th, the sheriff made a bill of sale, and it appeared that the act of bankruptcy was committed the 4th; the sheriffs return a *levy made*; and Lord *Mansfield* said, "The sheriffs had no authority to sell the goods of the plaintiffs, but of *Johns* the bankrupt; they ought to have delivered them to the plaintiffs, the assignees. Upon the foundation of the legal right, the chancellor, even in a summary way, would have ordered them to be delivered to the assignees. In this action, the injury complained of is the wrongful conversion. The assignment was made the 8th, and the sale not till the 28th, the return of the writ not till the octave of *St. Hilary*; the sheriff acts at his peril, and is When sheriff may make return of *nulla bona*.

(7) *Pyke v. Glendening*, 2 Dowl. P. C. 611.

(8) *Edwards v. Dignam*, 1b. 643.

“answerable for any mistake; infinite inconveniences
 “would arise if it were not so. The sheriff may take
 “an indemnity from the plaintiff in case there be a doubt
 “concerning the property of the goods (*h*).”

And the sheriff will be liable to the assignees for goods taken in execution after acts of bankruptcy, whether he had notice or not (*l*).

Upon a *fi. fa.* the sheriff returns *nulla bona*, the bankrupt lying in prison two months, and a commission issued.

The plaintiff, in *Tr. 1757*, obtained judgment against the bankrupt in *C. P.* for 2,000*l.* debt, and 6*l.* 10*s.* damages; 17th *June* a *fi. fa.* issued thereon, returnable on the 26th of *June*. The sheriff, on the 18th of same month, took the goods to the value of 292*l.* 7*s.* and 5th *November* returned *nulla bona*. The bankrupt was arrested 2d *May* 1757, at the suit of the plaintiff; on the 4th, he was charged with process out of the *C. P.* at the suit of *Solomons*, and on same day was brought up by *ha. corp.* and committed to the *Fleet*. The bankrupt was a trader within the statutes, and remained in custody at the plaintiff's suit from the time of his first arrest until the 2d *July* following, on which day plaintiff discharged him out of custody as to his suit; but he continued as to *Solomons'* until the 6th of *July*; on the 5th a commission issued, and he was declared bankrupt; on the 21st *July* his effects were assigned.—*Per* Lord *Mansfield*, “The lying two months in prison is
 “a strong presumption that the person was insolvent at
 “the time of the arrest. So that here is plainly an act
 “of bankruptcy upon the 1st of *May*, whatever dispute
 “may be made about there being one upon the second,
 “consequently the sheriff's return is true.”

If the goods of *A.* be seized on a *fi. fa.* against *A.* and *after* the seizure *A.* becomes a bankrupt, this act of bankruptcy cannot affect the goods levied in execution (*m*).

Where the party directed the officer to allow a party to remain in possession to carry on the business, and no account was taken for three months, when, upon the

(*k*) *Cooper v. Chitty*, 1 Burr. 20.

(*l*) *Price v. Helyar*, 4 Bing. 587,
 & 1 T. R. 175. 5 Moore, 313. But

qu. if this does not now depend on
 the knowledge or notice of the act of

bankruptcy in the party at whose suit
 the execution issues. See 6 *Geo.* 4,
 c. 16, s. 81. 1 Deac. B. 692.

(*m*) *Ld. Raym.* 724.

bankruptcy, the sheriff returned *nulla bona*, held that he was right in so doing, the assignees being entitled to stand in the situation of a second execution creditor (*n*).

So where after a return of the goods remaining in hand, for want of buyers, the plaintiff lay by until after a commission of bankrupt, and until after the goods had been given up to the assignees, and the sheriffs had gone out of office, the court set aside the writ of *distringas*, and left the plaintiff to his remedy by action, if the commission were fraudulent (*o*). But he can only seize sufficient to satisfy that execution, and the assignees may recover the surplus in trover (*p*).

And now, executions *bonâ fide* levied more than two months before commission of bankrupt issued will bind the goods, notwithstanding prior act of bankruptcy, provided the execution creditor had no notice at the time of any such prior act of bankruptcy.

If executions be levied more than two months.

6 Geo. 4. c. 16. s. 81.

If a plaintiff cannot find sufficient effects of the defendant to satisfy his judgment, the court will order the sheriff to retain for the use of the plaintiff the money which he hath levied in another action, at the suit of the defendant (*q*).

If money be levied in another action.

And where by delivery of an extent he is not in a condition to make his return by the day, the court will enlarge the time for so doing; but such applications being in delay of justice, are not favoured (*r*).

Where before seizure under the writ of execution a writ of error is allowed, and no legal seizure can be made, although the return of *nulla bona* was held bad, yet the plaintiff was entitled only to nominal damages (*s*). The proper course would have been for him to have returned that such writ had been allowed, and the court would have relieved him (*t*).

Where goods were claimed under a bill of sale, and the sheriff returned *nulla bona*, the money was ordered to be brought into court by the sheriff, and the return to be made agreeable to the event of a trial of the

Money ordered to be brought into court.

(*n*) *Doker v. Hasler*, 2 Bing. 479.

(*o*) 15 East, 78.

(*p*) *Stead v. Gascoigne*, 8 Taunt. 527.

(*q*) *Armistead v. Philpot*, Doug. 235.

(*r*) *R. v. Sh. of Devon*, 1 Ch. R. 643.

(*s*) *Cleghorn v. Desanges*, 3 B. Moore, 83.

(*t*) *Ibid*.

validity of the bill of sale, after such validity tried in an action (*u*).

And if the sale to a third party be found by the jury to be fraudulent, the action by such party against the sheriff cannot be supported (*w*).

If a dispute happen between plaintiff and a stranger.

The court will not stay goods taken by a *fi. fa.* in the hands of the sheriff till a dispute between the plaintiff and a stranger concerning the property is decided, unless for the protection and at the request of the sheriff (*x*).

Where there is another writ in the office, and the sheriff is served with a rule to pay over money, he ought to apply to the court, or give notice of the fact to the defendant, or he may subject himself to an action for a false return to the second process (*y*). If he pay over after notice, he must stand or fall with the right of the party, and it may be shown that the judgment and execution are fraudulent (*z*).

The court will protect the sheriff in proceeding to sale after notice of bankruptcy when both parties refuse to indemnify him (*a*). His course is to apply for an enlargement of the time to return from term to term, and which is allowed as matter of course (*b*). So where goods taken are claimed by a third party (*c*).

Where after sale and payment to the execution creditor, the sheriff was sued in trover by the assignees, and gave notice thereof to the creditor, and offered to defend if he would furnish the means, and on a refusal had suffered judgment by default; in an action brought by him to recover back the money paid, held that he was not

(*u*) *Rex v. Breen*, 1 Keb. 905.

(*w*) *Earl of Bristol v. Wilshire*, 1 B. & Cr. 514. 7 Taunt. 59. 3 Camp. 352.

(*x*) *Shaw v. Tunbridge*, 2 Bl. R. 1064.

(*y*) *Saunders v. Bridges*, 3 B. & A. 95.

(*z*) *Warmoll v. Young*, 5 B. & Cr. 660.

(*a*) *King v. Brydges*, 7 Taunt. 294.

Burr v. Freethy, 1 Bing. 71.

(*b*) *Venables v. Wilks*, 4 B. Moore, 339. S. P. *Ledbury v. Smith*, 1 Ch. 294. *Probinia v. Roberts*, Id. 577. *Beavan v. Dawson*, 6 Bing. 566.

(*c*) *Etchells v. Lovatt*, 8 Pri. 54. *Glossop v. Pole*, 3 M. & S. 175.

bound to defend; but that to entitle him to recover the money he was bound to show the validity of the bankruptcy (*d*).

But where the goods of two defendants had been seized, and they disputed as to the amount of their share, the court refused to allow him to pay the surplus into court until they had indemnified him (*e*). He ought, however, to stand indifferent between parties claiming, and retain the money in his hands until they can apply to the court (*f*).

The within-named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within-mentioned, or any part thereof. The answer of, &c. *Nulla bona to a fieri facias in debt.*

The within-named *C. D.* hath not any goods or chattels in my bailiwick whereof I can cause to be levied the damages within-mentioned, or any part thereof. The answer of, &c. *To a fi. fa. in case.*

The within-named *A. B.* and *C. D.* have not, nor hath either of them, any goods or chattels in my bailiwick whereof I can cause to be levied the debt and damages within-mentioned, or any part thereof. The answer of, &c. *Return of nulla bona against two defendants.*

If the late sheriff takes the defendant upon process, or levies upon goods in his time, and the present sheriff is called on to return the writ, such return is to be made in the name of the *late* sheriff; then the present sheriff indorses it under thus : *Return of new sheriff, where the late sheriff returns the levy, and is out of office.*

This writ as above indorsed was delivered by the above-named late sheriff to me the under-named now sheriff, at the time of his going out of office. The answer of, &c.

By virtue of this writ to me directed, I have caused to be levied and made of the goods and chattels of the within-named *C. D.* to the value of 40 *l.* which money I have ready: and the within-named *C. D.* hath not any other or more goods or chattels in my bailiwick whereby I can cause to be levied the residue of the debt and damages within-mentioned, or any part thereof, as within I am commanded. *Levy upon a fi. fa. in case to part, and nulla bona as to the residue.*

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 40 *l.*; and I further certify, that I have paid to *A. B.* the landlord of the premises, the sum of 20 *l.* for half a-year's rent due to him at last, and the remaining sum of 20 *l.* I have ready, as within I am *If the landlord is paid, return thus.*

(*d*) *Austin v. Ward*, 1 Ry. & M. 116. (*e*) *Hartley v. Stead*, 8 Moore, 466. (*f*) 5 B. & Cr. 660.

commanded, and the said *C. D.* hath not any other or more goods or chattels in my bailiwick whereof I can cause to be levied the debt and damages within-mentioned, or any part thereof.

Fieri feci, and remain for want of buyers, &c.

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 40*l.* as within I am commanded, which said goods and chattels remain in my hands unsold for want of buyers, therefore I cannot have the money before His Majesty at the day and place within-mentioned, as within I am commanded.

After such a return, he cannot, upon a *vend. exp.* being issued, return thereto that he had sold, and retained to satisfy a prior execution (*g*).

Nulla bona, and that defendant is a beneficed clerk.

The within-named *C. D.* hath not any goods or chattels in my bailiwick whereof I can cause to be levied the debt and damages within-mentioned, or any part thereof, as within I am commanded: and I further certify, that the said *C. D.* is a beneficed clerk (having no lay fee in my bailiwick), to wit, vicar of the parish and parish-church of *L.* in the county of *B.* and diocese of *L.*

If a rectory.

If it is a rectory, say, rector of the parish and parish-church of *A.* in the county of *B.* and diocese of *L.*

Return to a *fi. fa.* levy as to part, as to others, as pawns in the hands of defendant.

I have levied and made of the goods and chattels of *A. B.* in the writ to this schedule annexed named, to the value of 500*l.*; and I certify that I have paid the sum of 15*l.* being the expenses in levying the execution, and also to Mr. *C. D.* the landlord of the premises, the sum of 59*l.* for one year's rent due to him at last, making together the sum of 74*l.*, and the sum of 426*l.* being the residue of the said sum of 500*l.* I have ready. I also certify, that the within-named *C. D.* is a pawnbroker, and that I seized divers goods and chattels which were deposited in his hands as pawns of several persons, to the value of 540*l.* which remain in my hands; and I further certify, that the within defendant hath not any other or more goods or chattels in my bailiwick whereof I can cause to be levied the residue of the debt and damages within-mentioned, or any part thereof, as within I am commanded (*h*).

Mandavi ballivo.

I have sent to the bailiff of the liberty of *S.* in my county to levy the within debt and damages, which said bailiff hath the full return of all writs and process within the same liberty, and the execution thereof; so that no execution of this writ can be made by me, within the said liberty;

(*g*) *Rowe v. Tapp*, 9 Pri. 317.

(*h*) Settled by Mr. Wallace.

which said bailiff hath not yet given me any answer thereto. The answer of, &c.

Or if he hath answered,

Which said bailiff hath answered me thus [*here set forth his return and name.*]

The within-named *A. B.* hath not any goods or chattels which were of the within-named *C. D.* at the time of his death in his hands to be administered, whereby I can cause to be levied the debt and damages within-mentioned, or any part thereof.

Return to a
fi. fu. against
executor of
nulla bona
testatoris.

I have levied and made of the goods and chattels of the within-named *C. D.* deceased in the hands of *A. B.* executor, within-mentioned, to the value of 50 *l.* which money I have ready. The answer of, &c.

Fieri feci.

I have levied and made of the goods and chattels which were of the within-named *C. D.* at the time of his death, to the value of 50 *l.* which money I have ready. The within-named *A. B.* executor, &c. hath not any goods or chattels in my bailiwick whereof I can cause to be levied the sum of 6 *l.* the costs and charges within-mentioned, or any part thereof. The answer of, &c.

To a *fi. fu.*
against an ex-
cutor where
levy is to be
made of goods
of testator.

The within-named *B. W.* hath not any goods or chattels which were of the within-named *M. H.* at the time of his death in my bailiwick in his hands to be administered, whereby I can cause to be levied the debt and damages within-mentioned, or any part thereof. And I further certify, that divers goods and chattels, which were of the within-named *M. H.* at the time of his death, came to the hands of the said *B. W.* after the death of the said *M. H.* to be administered, to the value of the debt and damages within-mentioned; which said goods and chattels the said *B. W.* executor as aforesaid hath cloigned and wasted, and converted the same to his own use (*i*).

Nulla bona
to *fi. fu.* against
an executor,
and a *devastavit.*

It is now usual to bring an action suggesting a *devastavit*, which is the better way.

To Writs of Habeas Corpus.

There are several writs of *habeas corpus* to which the subject is entitled by common right when he is deprived of his liberty. But the great and efficacious writ, in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*, directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, *ad faciendum, subjiciendum* and *recipiendum*, to do, submit to

Habeas corpus.

and receive whatsoever the judge or court awarding such writ shall consider in that behalf (j).

Hab. corp. cum causa.

The writ of *habeas corpus ad faciendum et recipiendum*, which is commonly called a *habeas corpus cum causâ*, “because it commands the sheriff, or person in whose custody he is, to bring him before the chief justice therein named, or in his absence, any other justice of the same court, together with the day and cause of his caption and detainer, to do and receive whatsoever shall be considered of him in that behalf;” who, upon reading the causes returned, will of course commit him to the *King’s Bench* prison; but if he be already in custody by virtue of a writ issued out of this court, he may have this writ in the first instance to go to that prison.

Formerly this writ could not be returnable immediately, unless, &c. but now may.

This writ, in the fifth year of the reign of *Ch. 2.* could not be returnable immediately, or in the vacation, unless the party was in prison in *London* or *Middlesex*, or in order to deliver him over in discharge of his bail; but since the statute of *Wil. 3.* which gave liberty to a plaintiff (instead of bringing his prisoner to this court at the great expense of the writ of *habeas corpus ad respondendum*) to charge him with a declaration in prison, it has been determined that in all civil suits this writ may be returnable immediately before a judge at his chambers, and may be now sued out without any previous motion made (k). And that if the sheriff, &c. do not obey it in convenient time, he will not only be subject to the penalties in the *31 Car. 2.* but to an attachment for his contempt, that sort of punishment being the spirit of the act of parliament (l).

Habeas corpus ad testificandum.

The *habeas corpus ad testificandum* is issued where a witness is confined in prison, directed to the marshal, sheriff, &c. in order to bring him before the court where the cause is to be tried, to give evidence on the part of the person who sues it out; the sheriff returns this writ with the causes of detainer, and the keeper brings the body into court.

Hab. corp. ad satisfaciendum.

The *habeas corpus ad satisfaciendum* is directed to the same person to bring the body into court, with the causes of his detainer, on a day certain named therein, to satisfy or make satisfaction to the plaintiff the debt and damages stated therein, which being obeyed, the court commit him to the custody of the warden or marshal, as the writ directs.

(j) 8 St. Tri. 142.

(k) 3 Burr. 1876.

(l) 2 Burr. 854.

By 31 Car. 2. it is enacted,

That whensoever any person shall bring any *habeas corpus*, directed unto any sheriff or gaoler &c., or other person, for any person in his custody, and the writ shall be served on the said officer, or left at the gaol or prison with any of the under officers, under keepers or deputies, he or they shall, within *three days after such service* thereof, (unless the commitment were for treason or felony, plainly and specially expressed in the warrant of commitment), upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and indorsed on the same writ, not exceeding 12 *d.* *per* mile, and on security given by his own bond to pay the charges of carrying back the prisoner if he should be remanded, and that he will not make any escape by the way, make return of such writ, and bring the body of the party so detained, &c. before the lord chancellor, &c. or such other persons before whom the said writ is made returnable, and shall certify the true causes of his detainer, unless the commitment be in a place beyond twenty miles distance, &c. and if beyond the distance of twenty, and not above 100 miles, then within ten days; and if beyond the distance of 100 miles, then within 20 days.

That all such writs shall be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*, and signed by the person that awards the same; and if any person shall stand committed for any crime, (unless for treason or felony, plainly expressed in the warrant of commitment), in the vacation time, it shall be lawful for such person so committed, (other than persons convict, or in execution by legal process), or any one on his behalf, to complain to the lord chancellor, &c. and the said lord chancellor, &c. justice or baron, on view of the copy of the warrant of commitment, or on oath that it was denied, are required, on request in writing by such person or any on his behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, to grant an *habeas corpus* under the seal of the court, whereof he shall be one of the judges, to be directed to the officer in whose custody the party shall be, returnable *immediatè* before the said lord chancellor, &c. justice or baron; and on service thereof as aforesaid, the officer, &c. in whose custody the party is, shall, within the times limited, bring him before the said lord chancellor, &c. before whom the said writ is returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon, within two days

c. 2. s. 2.

Writs of *habeas corpus* within three days after service to be returned, and the body brought.

Upon tender of the charges, to be ascertained by the judges.

Beyond 20 miles, ten days.
beyond 100, twenty days.

Such writ how to be marked.

And if any person, &c. shall be committed in vacation time, to complain, &c. &c.

Who is to grant an *habeas*, returnable immediately.

And the officer shall certify the true causes of the commitment.

after the party shall be brought before them, the said lord chancellor, &c. before whom the prisoner shall be brought, shall discharge the said prisoner from his imprisonment, taking his recognizance, with one or more sureties, in any sum according to their discretion, having regard to the quality of the prisoner and nature of the offence, for his appearance in the *King's Bench* the term following, or in such other court where the offence is properly cognizable, as the case shall require; and shall certify the said writ, with the return thereof, and the recognizance, into such court, unless it be made appear to the said lord chancellor, &c. that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by law the prisoner *is not bailable*.

s. 3.

After assizes proclaimed, no prisoner to be removed.

s. 18.

Officers how to be proceeded against for not obeying such writs.

s. 5.

No excuse for sheriff or gaoler, that he is not paid.

“That after the assizes proclaimed for that county “where the prisoner is detained, no person shall be removed from the common gaol upon any *habeas corpus* “granted in pursuance of this act, but upon such *habeas corpus* he shall be brought before the judge of assize in “open court, who thereupon shall do what to justice shall “appertain.”

“That if any officer, &c. shall neglect or refuse to make “return, or bring the body of the prisoner according to “the command of the said writ, within the respective “times; or upon demand made by the prisoner or person “in his behalf shall refuse to deliver, or within the space “of six hours after demand shall not deliver to the person “so demanding, a true copy of the warrant or warrants of “commitment and detainer of such prisoner, which he and “they are hereby required to deliver accordingly, all and “every the head gaolers and keepers of such prisons, and “such other person in whose custody the prisoner shall “be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of 100*l.*, and for the second offence the sum of 200*l.*, and shall and is hereby “made incapable to hold or execute his said office.”

As the gaoler, &c. is obliged to bring up the prisoner at the day prefixed by the writ, it is no excuse for not obeying of a writ of *hab. corp. ad satisf.* that the prisoner did not tender his fees due to the gaoler; nor yet is the want of such tender an excuse for not obeying a writ of *hab. corp. ad fac. et recip.*, but if the gaoler bring up the

prisoner by virtue of such *habeas corpus*, the court will not turn him over till the gaoler be paid all his fees (*a*).

As upon the return of the writ the court is to judge whether the cause of the commitment and detainer be according to law or against it; so the officer or party in whose custody the prisoner is must, according to the command of the writ, certify on the return thereof *the day*, and “also the causes depending against him; and “in extra-judicial commitments, the warrant of commitment ought to be returned, as also every writ of execution in *hæc verba*, and with a *paratum habeo*,” that the judge may either discharge, bail or remand the prisoner (*b*).

The sheriff is to make a certain return.

It is said in general, that upon the return of the *habeas corpus* the cause of the imprisonment ought to appear as specifically and certainly to the judges before whom it is returned, as it did to the court or person authorized to commit (*c*).

What ought to appear.

For if the commitment be against law, as being made by one who had *no jurisdiction* of the cause, or for a matter for which by law no man ought to be punished, the court are to discharge him, and therefore the *certainty of the commitment ought to appear*; and the commitment is liable to the same objection where the cause is so loosely set forth that the court cannot adjudge whether it were a reasonable ground of imprisonment or not (*d*).

If commitment be against law, the court ought to discharge defendant.

The sheriff cannot return that he was resisted, and therefore disabled to make execution of the writ, for by 13 Ed. 1. c. 39, he may take *posse comitatus* (*e*).

Cannot return resistance.

Where an insufficient return has been made to the first writ of *hab. corp.* an attachment may be granted without issuing an *alias* and *pluries* writ (*f*).

If a person in custody on an *excommunicato capiendo* brings a *habeas corpus*, the writ of *excommunicato capiendo* itself must be returned, as well as the sheriff's warrant for taking him, because the warrant may be wrong, when the writ is right; and though the warrant be wrong, yet if the writ is right, the party is rightfully in custody of the sheriff (*g*).

Excom. capiendo ought to be set forth at large.

(*a*) 2 Jon. 178. March, 89. (*d*) Hal. P. C. 584. Skin. 676. Keb. 272. 280. 2 Show. 172. pl. 165. pl. 2. 12 Co. 130.

(*b*) 2 Nels. Abr. 915. 2 Cro. 543. (*e*) 2 Inst. 454.

5 Mod. 156. 2 Lil. Abr. 2. (*f*) Rex v. Winton, 5 T. R. 89.

(*c*) Vaugh. 137. (*g*) Salk. 350. pl. 7.

Return to a
hab. corp.
to bring in the
body with the
cause.

———, } I, G. B. esq. sheriff of the said county, do
to wit. } humbly certify and return to the right honour-
able , His Majesty's chief justice in the writ to
this schedule annexed, that before the said writ came to
me, (that is to say) on the day of in the
year within written, C. D. in the said writ named, was
taken, and in His Majesty's gaol for the said county under
my custody is detained, by virtue of His Majesty's writ of
latitat against him, by the name of C. D. to answer A. B.
in a plea of trespass, and also to a bill of the said A. B.
against the said C. D. for 100*l.* upon promises, according,
&c. to be exhibited, returnable before the king at *West-*
minster, on *Wednesday* next after the morrow of *All Souls*.
Witness at *Westminster*, the day of
in the year of His present Majesty's reign.

Oath for 50*l.* and upwards. *Law and Markham.*

A. K. attorney, (Date.)

Detained also
on a *ca. sa.*

The said C. D. is also detained under my custody by
virtue of a writ of *capias ad satisfaciendum*, the tenor of
which said writ follows in these words: (to wit) *William*
the fourth, &c [here set forth the writ *verbatim*, attorney's
name, and the indorsement; then say.] And these are the
causes of the taking and detaining the said C. D. which to-
gether with his body I have ready, as by the said writ I
am commanded.

Indorse on the writ thus:

Return to the
writ to be in-
dorsed.

"The execution of this writ appears in the schedule
"hereto annexed."

The answer of G. B. esq. sheriff.

Another where
defendant was
in custody of
the late sheriff,
and this writ
returned by
the present.

———, } I, J. P. esq. sheriff of the county aforesaid, do
to wit. } humbly certify and return to the right honour-
able the chief justice in the writ to this schedule
annexed named, that before the said writ came to me,
(that is to say) on the day of in the
year of the reign of His present Majesty, the said C. D. in
the said writ named was taken by G. H. esq. then sheriff
of the said county, and in His Majesty's gaol for the said
county was detained under his custody, by virtue of His
Majesty's writ of *latitat*, issued against him by the name
of C. D. to answer A. B. in a plea of trespass, and also to
a bill of the said A. B. to be exhibited against the said
C. D. for 100*l.* upon promises, according, &c. returnable
before the king at *Westminster*, on . Witness
at *Westminster*, the day of in
the year of His present Majesty's reign.

S. K. attorney. (Date.)

Oath for 50*l.*

And that by indentures duly executed, bearing date the day of _____ in the year aforesaid, made between the said *G. H.* esq. then late sheriff of the said county, of the one part, and me the said *J. P.* then and now sheriff of the said county, of the other part, the said *C. D.* was delivered to me, the said present sheriff, by the aforesaid late sheriff, at the time of his going out of his office, charged with the cause aforesaid; he is also detained under my custody by virtue of a writ of *capias*, returnable before the king's justices at *Westminster* on the morrow of *All Souls*, to answer *J. B.* in a plea of trespass, and also that the said *C. D.* may answer the said *J. B.* according to the custom of the court of *Common Bench*, in a certain plea of trespass on the case upon promises, to the damage of the said *J. B.* of 50*l.* Witness, &c. Oath for 10*l.* and upwards. *B. L.* attorney. And these are the causes of taking and detaining the said *C. D.* whose body I have ready, as by the said writ I am commanded.

_____ } *J. B.* esq., sheriff of the said county, to
to wit. } *C. S.* my bailiff, and also keeper of His Ma-
jesty's gaol or prison in and for the said county. By
virtue of His Majesty's writ to me directed, I command
you that you have the body of *J. K.* before _____ chief
justice, assigned to hold pleas, &c., at his chambers in
Serjeant's-Inn, Chancery-lane, London, immediately after
the receipt of this your warrant, to do and receive what
the king's chief justice shall then and there consider of
him in this behalf. Hereof fail not, as you will answer at
your peril. Given under my hand and seal of office, this
day of _____ . By the same sheriff.

Warrant to the
gaoler to con-
duct the body
before the Chief
Justice.

Borough of _____, in the co. of _____ (to wit.) We,
_____, esq., steward of the court of pleas of our
sovereign lord the king, held in and for the said borough,
and _____, esq. portreeve of the said borough and court
aforesaid, do humbly certify unto _____ chief justice,
assigned to hold pleas in His Majesty's court before the
king himself, that before the coming of this writ to us
directed, and to this schedule annexed, *J. B.* in the said
writ named, was taken and detained under our custody,
by virtue of a writ of *capias ad respondendum*, issued out
of the said court of pleas, held in and for the said borough,
against him, by the name of *J. B.* to answer *C. D.* of a plea
wherefore that he, with force and arms, the close of the said
C. D. at *Swansea*, did break, and other injuries to him did,
to his great damage, and against His Majesty's peace.
And also to answer the said *C. D.* according to the custom
of the same court, of a plea of debt, to the damage of the

Return of *ha.*
corp. from a
steward and
portreeve of
a borough.

said *C. D.* of 120*l.* Witness *G. P.*, esq. steward, and
R. P., esq. portreeve, the day of in the
 year of His present Majesty's reign.

Take bail for 60*l.* *per* affidavit, filed.

G. J., deputy recorder.

G. P. *R. P.*

To which said writ the said *J. B.* hath put in special bail, and the said *C. D.* hath declared against him, in a plea of trespass on the case, to his damage of 100*l.* And at a court holden in and for the said borough, on the day of in the *Guildhall* of the said borough, the said *C. D.* obtained an interlocutory judgment against the said *J. B.* for want of a plea, and so the said plea remains in the said court undetermined.

And this is the only cause of taking and detaining the said *J. B.* in the said writ to this schedule annexed named, which, together with his body, we have ready, as by the said writ we are required. The answer of, &c.

G. P., steward. *R. P.*, portreeve.

Return on writ. The execution of this writ appears in the schedule hereunto annexed. The answer of, &c.

G. P., steward. *R. P.*, portreeve.

Return to a
hab. corp. ad.
satisfac. in the
 late riots, by
 the warden of
 the Fleet.

The *Fleet*, } I, the within-named warden of the prison
 to wit. } of our lord the king of the *Fleet*, do most
 humbly certify and return, that before the coming of the
 within writ to me directed, to wit, on the said
 prison having been destroyed by fire, which I could not
 prevent, and the prisoners lately confined in the said prison
 being now at large (amongst which the said *S. H.* within-
 named is one), therefore the body of the within-named
S. H. before the barons of the king's court of *Exchequer*
 within-mentioned, at the day within-written, I cannot have,
 as I am within commanded.

Return to writ. The execution of this writ appears in the schedule annexed. The answer of, &c.

Party dead,
 a good return. Upon a *hab. corp. cum causâ*, it is a good return, that
 the party is dead (*h*).

Sheriff to re-
 turn the truth.

If a man be condemned in any court, and his body taken in execution, and then he procures any writ to the sheriff to remove his body, &c. the sheriff upon such writ ought not only to return the truth, or cause of the condemnation, *viz.* that his prisoner is condemned by

judgment, or in execution, that so at the last the prisoner may be remanded; for he shall not be let to mainprize, but be sent back to prison, there to remain until he hath satisfied the plaintiff (*i*). But also the sheriff ought to bring in the body at the day, and according to the writ (*h*).

2 H. 5. c. 2.

To this writ the sheriff may return *cepi* and *languidus*, so that he could not have the body without danger and peril of his life (*l*).

May return *cepi* and *languidus*.

Also may return him in custody for "felony, murder, treason, or the like" (*m*). "Outlawed, excommunicated, or committed by a mittimus from a justice;" in these cases set forth the warrant in *hæc verba* (*n*); or by an order of sessions.

Imprisonment for felony, &c.

If a return be of a commitment by commissioners of bankrupt, say,

Commitment by commissioners of bankrupt.

On the day of *J. M.* in the said writ named, is detained in my custody, in the prison of *N.* by virtue of an order under the hands and seals of the major part of the commissioners named in a commission of bankrupt awarded and issued against the said *J. M.* the tenor of which said order is in the words and figures following: that is to say, [*state the whole order verbatim, and their names*].

And this is the cause of the taking and detaining the said *J. M.* whose body I have ready according to the command of the said writ hereunto annexed.

I, esq., warden of the prison of our lord the king of the *Fleet*, to the justices of the lord the king within written, most humbly certify and return, that before the coming of this writ to me directed, the within-named *A. B.* by force and arms broke the said prison, and out of my custody, without any leave, and against my will, escaped and fled to places to me unknown, and is not yet brought back or retaken; and for that cause, the body of the said *A. B.* before the justices of the lord the king within written, at the day and place within contained, I cannot have, as is to me within commanded. The answer of esq., warden.

Return to a *ha. corp.* out of the crown office, that the prisoner broke prison and escaped.

A *hab. corp. ad test.* is returned with all the causes against the defendant, in the same manner as a *hab. corp. cum caus.* and the gaoler's man attends with him.

Hab. corp. ad testificandum sheriff to return.

So is the *hab. corp. ad satisf.*

(*i*) Fitz. 251.(*k*) Dalt. 253.(*l*) Lib. Intr. 190. Kitch. 258. Dalt. 250.(*m*) Dalt. 252.(*n*) Officin. Brev. 235.

To Writ of Formedon.

Return of a
formedon.

The sheriff on this writ returns the usual pledges to prosecute, *John Doe* and *Richard Roe*, and that the summoners are *J. T.* and *R. J. (o)*.

But he ought to return *nihil, non est inventus*, for he is to summon him on the land demanded, whether he be tenant or not (*p*).

To Writ of Habere Facias Possessionem.

For particulars concerning this writ, and that of the writ of *habere facias seisinam*, vide p. 159.

What sheriff
may return.

To this writ the sheriff may return, that he has given full and quiet possession of the premises in the writ mentioned to the plaintiff, *John Doe*.

Always ready
to deliver.

That he was always ready to deliver possession, and appointed divers times for the plaintiff to come and receive the same from him; at which time he was there ready to deliver him the possession, but that no one came on the plaintiff's behalf to receive it (*q*).

No such land
not good.
5 H. 7. 27.

But it is no good return, that there is *no* such land.

Offered to give
possession.

The sheriff may return, that he offered to the demandant possession, but he refused to take it (*r*).

Sheriff was
tenant.

That the sheriff was tenant to the land, and therefore he could not serve the writ (*s*).

Tenant not
knowing the
land, may pray
the view.

But where the tenant doth not well know the land demanded, he may pray the view, so that he may be showed which is the land demanded. And the sheriff is not bound to know or to seek the land demanded; and therefore, except the demandant shows it to him, he may make his return accordingly.

When sheriff
makes the
view, to warn
the tenants.

When the sheriff makes the view, he ought to warn the tenants and veyors; for otherwise the tenant shall not know when the sheriff makes the view. And the sheriff and veyors must go to the tenements demanded, &c. And the sheriff must have with him *six* at the least of the jury to take the view (*t*).

(o) Dalt. 247. vide Dy. 252.

(r) Dyer 278.

(p) Dalt. 248.

(s) Br. Ret. 46.

(q) Dalt. 539. Floyd v. Bethell,
Roll, 459, title *Return*.

(t) Co. Litt. 158. Dalt. 256. Lib.
Intr. 686.

Where part of a manor, or the like, is in demand, the view shall be of the whole (*u*). So where a moiety or third part of a house or land is only in demand, yet the whole shall be put in view (*v*).

Where part of a manor is in demand.

The sheriff may return, that he was ready to make the view, and that neither the tenant nor any for him came to the view (*w*).

May return ready to make view.

By virtue of this writ to me directed, I did on the day of _____ in the year within-written, give full and peaceable possession unto the within-named *John Doe*, of the messuages, lands and premises, with the appurtenances within-mentioned, as within I am commanded. The answer of, &c.

Return to *hab. fac. poss.* of full possession being given.

[*Add this*] and the within-named *C. D.* hath not any goods or chattels in my bailiwick whereof I can cause to be levied the damages and costs within-mentioned, or any part thereof.

If a *fi. fa.* is annexed, and no goods.

I have levied and made of the goods and chattels of the within-named *C. D.* to the value of 20*l.*, being the damages and costs within-mentioned, which money I have ready.

If a levy of goods.

By virtue of this writ to me directed, I have been always ready and willing to deliver the possession of the premises within-mentioned, to the within-named *John Doe*, with the appurtenances, as I am commanded; but that no man came to me on the part of the said *John Doe* to show the same premises to me, or any part thereof, or to receive possession thereof, or any part thereof, from me. The answer of, &c.

Return no one came to show or receive possession of the premises.

To Writ of Latitat.

The return to this writ is either *cepi corpus*, or *non est inventus* (*x*), *mandavi ballivo*, *languidus*, and that defendant is a member of parliament, or bankrupt, or writ issued within the forty-two days allowed for his surrender, or *rescous*.

Latitat.

To Writ of Levam Facias.

For the execution of this writ, see p. 141.

Leva. fac.

On this writ the sheriff returned, that he levied 10*l.* of the sum, &c. the which he hath delivered to the party: this seems to be a good return; and upon this return the party may sue a *sicut alias levam facias*, directed to the sheriff to levy the residue (*y*).

What is a good return.

(*u*) 11 H. 4. Bro. View, 39.

(*x*) Lib. Intr. 109. c. 166. d.

(*v*) Ib. 46. 71.

(*y*) Dalt. 260.

(*u*) Fitz. View, 126

To be levied
on the profits
of the land.

This writ is only to be levied upon the profits of the land, and upon the goods of him that hath forfeited a recognizance, &c. (z). But the sheriff cannot seize the land, and deliver that to the party (a).

Nulla bona.

The within-named *A. B.* hath not any goods, chattels or rents in my bailiwick, where or by which I can cause to be levied the debt within-mentioned, or any part thereof, as within I am commanded.

Cepi.

I have taken into the hands of the lord the king, a certain inn, with three shops, [in such a place], of the within-named *J. S.* which are of the annual value of 10*l.*, besides reprises; and that the aforesaid inn, with the shops aforesaid, remain in my custody, until I have another command (b).

To Commission of Lunacy.

The commission being obtained, the sheriff appoints a place for the execution thereof, which ought to be near the place of the supposed lunatic's abode; a precept is then sent to the sheriff to summon a jury of twenty-four men, who immediately issues his summons to his bailiff for that purpose: the summons contains in substance the precept.

The sheriff attends this commission, as well as his officer who summoned the jury, and the following oath is administered by the sheriff to the jury.

The oath to be
administered
to the foreman.

You shall well and truly inquire of all such matters and things as shall be given you in charge, by virtue of His Majesty's commission now to you read, and a true verdict give, according to the evidence that shall be produced. So help you *God*.

Form of the
oath to be
administered to
the other jurors.

The same oath that your foreman hath taken on his part, you and each of you shall well and truly observe, and keep on your parts. So help you *God*.

The sheriff returns the precept of the commissioners, adding a panel of the jurors thereto.

Return.

The execution of this precept appears in a certain panel hereto annexed. The answer of, &c.

The commissioners return the commission.

Of Liberate.

Liberate.

This writ is used for the delivery of goods, &c. on an extent; and by the extent, the conusee of a recognizance

(z) Reg. Orig. 298. 300.

(a) Plow. 441.

(b) Dalt. 260.

hath not any absolute interest in the goods until the *liberate* (c). This writ is to be sued on a statute-staple, on a recognizance, before there can be a delivery in execution (d).

By virtue of this writ to me directed, on the day of in the year within-written, I have delivered to the within-named *L. S.* the manor, lands and tenements within-specified, with the appurtenances, to hold to him and his assigns, as his free tenement, until the debt within-mentioned, with the damages and costs, are fully paid and satisfied, as I am within commanded; and the within-named *J. S.* is not found in my bailiwick. The answer of, &c. (e).

Return of *liberate*, after an extent on bond.

Upon a *liberate*, if the sheriff hath duly executed the writ and paid the money to the plaintiff, he need not return the writ (f).

To Writ of Ne Exeat Regno.

The writ *ne exeat* is in the nature of an arrest, and cannot be maintained where the party has been previously arrested (g).

I have caused the within-named *N. B.* personally to come before me, and he found bail in the penalty of 600 *l.* according to the command of the within writ. The answer of, &c.

Cepi corpus to a ne exeat regno.

Of Pone.

Return to a writ of *pone*, vide p. 220, and return of *Pone*. summoned.

Of Exigent.

Return to a writ of proclamation on an *exigent*, see Proclamation. *Exigent*, p. 370.

Proclamation.

I have caused proclamation to be made, as within I am commanded; and I further certify, that the within-named *C. D.* is not found in my bailiwick. The answer of, &c. (h).

To a proclamation in Chancery.

I have caused proclamation to be made, as within I am commanded, and I have by virtue of this writ taken the body of the within-named *C. D.* and him in the prison of the lord the king of *N.* under my custody have caused

Cepi upon a proclamation out of Chancery, and detained on other writs.

(c) 2 Lill. 169.

(f) Dalt. 169. 261.

(d) 3 Salk. 159.

(g) Raynes v. Wise, 2 Mer. Ch.

(e) Lib. Intr. 598. Dalt. 261. R. 472.

233. (h) Dalt. 298.

to be safely kept ; but because the aforesaid *C. D.* is also detained in my custody by virtue of divers other causes, at the suit of divers other persons, therefore I cannot have his body at the day and place within contained, as within I am commanded, without the writ of the lord the king, to have the body of the said *C. D.* together with the day and cause of his being taken and detained, to me in this behalf directed.

Of Quare Impedit.

Quare impedit. The defendant must be summoned by the sheriff, and it may be made in the church, or to the person.

Tardè. The sheriff may return *tardè* (i).

Nihil. Also he may return *nihil* upon the *summons* and upon the *attachment* and *distringas* (k).

In a *quid juris clamat.* Upon a writ of summons, in a *quid juris clamat*, the sheriff is to return the party summoned in this or the like manner :

Summoners are, $\left\{ \begin{array}{l} E. F. \\ J. S. \\ J. D. \end{array} \right.$

The answer of *J. K.* esq. sheriff.

Recordari Facias Loquelam.

Re. fa. lo. Return of a writ of *recordari facias loquelam*, vide p. 197.

Rescue.

Rescue. *Rescue*, returned by several, p. 202; and by the defendant himself, p. 204.

Restitution.

Return to a writ of *Restitution*.

By virtue of this writ to me directed, immediately after the receipt of this writ, I restored and put into full and peaceable possession, the messuages and land with the appurtenances within mentioned, unto the within-named *A. B.* as within I am commanded (l).

Writ of Right.

Return to a writ of *right patent*.

Pledges to prosecute, $\left\{ \begin{array}{l} \text{John Doe,} \\ \text{and} \\ \text{Richard Roe.} \end{array} \right.$

The summoners of the within-named *C. G.* are *I. A. D. S.*; and at the most usual door of the parish church of,

(i) New Ret. Brev. 409.
(k) Ib.

(l) Greenw. 229. Officin. Brev. 224.

&c. within mentioned, on *Sunday*, the day of
in the year within written, immediately after divine service
and sermon ended, I did cause public proclamation to be
made according to the form of the statute in such case made
and provided. The answer of, &c.

Upon this writ issues a *grand cape* for non-appearance;
for the return of which see title *Dower*, p. 354.

Upon the *grand cape*, the sheriff must summon the
tenant to answer to his default, and further to answer
to the demand (*m*), and the names of the summoners.
He may return that he hath nothing whereby he can be
summoned. And that there is no such town (*n*).

An action cannot be maintained as for a false return
to a writ of right, founded upon a mistaken indorsement
made thereon by the judge's officer; the duty of the
sheriff is only to summon four knights, and notice to the
knights to appear may be well given after the first day
of the assizes (*o*).

By virtue of this writ to me directed, I have caused *J. E.*
I. H. P. D. and *G. M.* four lawful knights of my county,
to be summoned by *I. A.* and *G. W.* my bailiffs, to be be-
fore His Majesty's justices at the day and place mentioned,
to do as by this writ they are required, and as I am within
commanded: the said summoners are and each of them is
mainprized, by *John Doe* and *Richard Roe*. The answer
of, &c.

The return of
the *alias* writ
of summons of
four knights.

To Writ of Scire Facias.

The sheriff upon this writ is only to warn the party to
appear (before the justices, &c.) according to the writ,
and then to return the same: but such warning is to be
by *summons*, which is directed to the bailiff, to give know-
ledge to the defendant that he appear at such a man's
suit, in such a court, at a certain day, there to do that
which the writ requires.

Scire facias.

He may return *nihil, tardè*, or that the party is dead (*p*);
or summoned. But he ought to return the *real names* of
the *summoners*.

What sheriff
may return.

The within-named *A. B.* hath not any thing in my
bailiwick where or by which I can give him notice as
within I am commanded, nor is the said *A. B.* found in the
same.

Nihil to sci. fa.

(*m*) Dalt. 249.

(*o*) Windle v. Ricardo, 1 T. & Br. 17.

(*n*) Ib.

(*p*) Lib. Intr. 458. Br. 125.

But where the sheriff having improperly refused to return *nihil* until a certain fee paid, the court, in order to discourage the practice of ordering returns of *nihil*, discharged a rule to compel him to make the return, without costs (q).

Nihil to two defendants.

The within-named *A. B.* and *C. D.* have not, or hath either of them, any thing in my bailiwick where or by which I can give them or either of them notice, as within I am commanded, nor are they, or is either of them, found in the same. The answer of, &c.

Summonire feci.

By virtue of this writ to me directed, by *W. D.* and *J. K.* good and lawful men of my bailiwick, I have given notice to the within named *C. D.* to be and appear before the lord the king on the day and at the place within mentioned, to show, &c. as within I am commanded. The answer of, &c.

Summons to one and *nihil* to the other.

By virtue, &c. I have given notice to the within-named *A. B.* to be and appear before the lord the king on the day and at the place, to show, &c. as within I am commanded. The within-named *C. D.* hath not any thing in my bailiwick where or by which I can give him notice, as within I am commanded, nor is he found in the same. The answer of, &c.

That defendant died.

Before this writ came to me, the within-named *A. B.* died; therefore I cannot make known to him, as within I am commanded.

Return of notice to the tenant.

By virtue of this writ to me directed, I have given notice by *J. D.* and *J. H.* good and lawful men of my bailiwick, to *J. K.* tenant of fifteen messuages and hundred acres of land, with the appurtenances, situate, lying and being in the parish of *A.* in my bailiwick, which were the lands and tenements of *J. K.* at the time of the rendition of the judgment within mentioned, to show in manner as within mentioned, and as within I am commanded.

If the writ be directed to give notice to the heirs and tenants of the lands, then add, if they are not in the bailiwick:

If no heirs or tenants, then return thus.

There are not any heirs or tenants of the lands or tenements whereof the said *J. K.* was seised at the time of the rendition of the judgment within mentioned in my bailiwick, or ever after, whereof I can give notice to them, or either of them, as within I am commanded.

Nulla bona against an executor, &c.

The within-named *C. D.* executor, within mentioned, hath not any thing in my bailiwick where or by which, &c.

Against administrator.

Mandavi
ballivo.

To a sci. fa.
against bail
nihil.

Hab. fac. Seisin.

Hab. fac. seisin.

To a writ of
seisin.

To a precept to summon the sessions, *vide Sessions*.

Supersedeas.

Supersedeas.

Second Deliverance.

For the return to this writ, *vide* p. 198.

Venditioni Exponas.

Return to a writ of *vend. exp.*

If in the Ex-
chequer.

This writ issues to the sheriff on his former return of having goods to the value of, &c. and that they remain in his hands for want of buyers.

Where he returned that he had sold only part, and had the rest in his hands for want of buyers, an attachment was refused, unless it were made to appear that

he was trifling with the court, as the party might sue out a second *vend. exp.* (s).

Venire Facias.

Return summoned on *venire facias* out of Exchequer.

Summoners are, } *James Armstrong,*
and
} *Richard Ross.*

The answer of *J. L.* }
and } sheriffs.
R. S. esqrs. }

Nihil to the same.

The within-named *C. D.* hath not any thing in my bailiwick where or by which I can give notice to him, as within I am commanded, nor is he found in the same. The answer of, &c.

Venire facias juratorium.

The execution of this writ appears in the panel hereto annexed.

Here add a panel of the jurors thereto if in *C. P.* or *Exch.*, if in *K. B.* no need, as you add one to the *distringas*.

The same return does to a *distringas* or *hab. corpo. jurat*.

No issues are returned upon the *venire*, only pledges.

Each of the jurors are separately attached by pledges, *John Doe* and *Richard Roe*.

Withernam.

Return of *withernam nulla bona*.

The within-named *A. B.* hath not any cattle, goods or chattels in my bailiwick which I can take in withernam, as within I am commanded, nor hath he any other goods or chattels in my bailiwick by which he can be attached, nor is he found in the same.

Cepi to the same writ.

I have taken in withernam ten cows of the price of 40 *l.* of the within-named *C. D.* and delivered the same to the within-named *J. B.* safely and securely to be kept until the other beasts within specified of him the said *C. D.* before taken, and to places to me unknown sent, as within I am commanded, and the within-named *C. D.* I have attached by his goods and chattels (t).

The sheriff to this writ may return *tardè* (u).

If a replevy be of pots, &c. sheriff to take others.

If a replevy be of pots, pans, or the like, yet sheriff on *withernam* may take oxen, horses, or other cattle or goods (x).

(s) An. 2 Ch. 399.

(u) Fitz. Journ. 34. Dalt. 295.

(t) Fitz. Gage Deliv. 1. Dalt. 295.
Wilk. 312.

(r) N. Br. 45. Dalt. 296.

On a *nihil* returned, it is made a *quære* whether the sheriff may attach the defendant without some special clause in the writ (*y*).

The sheriff may deliver the beasts or goods taken in *withernam* to the plaintiff to keep, or may keep them himself, or may drive or send them to any place within his county to be safely kept (*z*).

The sheriff may deliver beasts, &c.

The sheriff may return, that he did not deliver the cattle to the plaintiff, for that he was not in the county (*a*).

That he did not deliver.

He may return that the cattle taken died in the pound before delivery of them to the plaintiff (*b*).

May return cattle died.

By *Bracton* and *Britton*, the sheriff upon a *withernam* may take cattle or other goods to double the value (*c*).

Warrants.

THE under-sheriff makes out warrants to the bailiffs, for the execution of the several writs directed to the sheriff, in the name of the high sheriff, and these warrants must be according to the nature of the writ, which for the *substance will direct them therein*; if there be a recital in the writ, it need not be inserted in the warrant; but the warrant is to contain the *mandatory part* of the writ only (*d*).

Sheriff, &c. to make out warrants according to the substance of the writ.

If any sheriff, &c. deliver out a warrant before he has the writ in his custody, he forfeits 10*l*.

6 Geo. 1.

Every warrant to have the same day and year plainly set down thereon as shall be set down on the *writ*, under forfeiture of 10*l*.; and the attorney's name.

What is necessary in the warrant.
6 Geo. 1.

Warrants are now printed in blank ready to fill up, and may be had at the stationers.

The officer's name in the margin of the warrant is not sufficient (*e*).

The sheriff's seal of office appearing on the warrant is sufficient evidence of the sheriff's authority to do the act required, as it will be presumed to have been properly fixed until the contrary is shown, and is sufficient to charge the sheriff in trover (*f*).

(y) Greenw. 231.

(d) Dalt. 117.

(z) New Ret. Brev. 495.

(e) 3 Camp. N. P. 228.

(a) Dalt. 295. *See qu.*?

(f) Gibbins v. Phillips, 7 B. & Cr.

(b) New Ret. Brev. 496.

535. n.

(c) Dalt. 295.

The Form of Warrants.

On an attachment of privilege in K. B.

——— } *E. F.* esq. sheriff of the county aforesaid, to
to wit. } the keeper of the gaol of the said county, and
also to *John Denn* and *Richard Fenn*, my bailiffs, greeting :
By virtue of His Majesty's writ to me directed, I command
you and every of you, jointly and severally, that you or one
of you attach *J. K.* if he shall be found in my bailiwick,
and him safely keep, so that I may have his body before the
king at *Westminster*, on _____ to answer *J. D.* gent.
one, &c. in a plea of trespass, and also to a bill of the said
J. D. to be exhibited against the said *J. K.* for 100*l.* on
promises, according, &c. Hereof fail not. Given under
my hand and seal of my office, dated the _____ day of

Writ dated the _____ day of

By the same sheriff.

Take bail for 50*l.* } Beware the defendant is not privileged
Denn in person. } or protected. To be executed by no
bailiffs but those who have given the sheriff security.
[*This to be added at the end of every warrant.*]

The like in the
Common Pleas.

——— } *E. F.* esq. sheriff of the county aforesaid, to
to wit. } &c. [*as before*] attach *John Denn*, so that I
may have his body before the king's justices at *Westminster*,
on _____ to answer *Richard Fenn*, gentleman, one of
the attornies of the court of Common Bench, according to
the liberties and privileges of the same court for such
attornies and other ministers of the same bench, from time
out of mind used and approved of in the same, in a plea of
debt. Hereof fail not. Given, &c.

Take bail for 50*l.* }

Fenn in person. }

By the same sheriff.

On an attachment in the
court of Chancery for not
answering.

To, &c. so that I may have him before the king in his
court of Chancery, on _____ wheresoever, &c. to an-
swer His Majesty as well touching a contempt which he,
as it is alleged, hath committed against His Majesty, and
all such other matters and things as shall be then and there
laid to his charge, and further to perform and abide such
order as His Majesty's said court shall make in this behalf.
Hereof fail not. Given, &c. By the same sheriff.

By the Court for not answering at the suit of C. D. Take
bail for 40*l.* *J. K.* solicitor.

The like in
the Exchequer.

Before the king's barons of his Exchequer, at *Westminster*, on, &c. to answer, &c.

The like on an
attachment of
contempt

To, &c. attach *Richard Fenn*, gent. one, &c. so that I
have him before the king's justices at *Westminster*, on
_____ next after _____ to answer His Majesty of and

concerning those things which shall then on the king's behalf be objected against him. Hereof fail not. Given, &c. against an attorney in C. P.
By the same sheriff.

Insert the words at the foot of the attachment beginning with the name of the cause, as *Denn* against *Fenn, gent. one, &c.*

——— } *E. F.* sheriff of the county aforesaid, to the Warrant on a
to wit. } keeper of the gaol of the said county, and also *latitat.*
to *A. B.* and *C. D.* my bailiffs, greeting: By virtue of His Majesty's writ to me directed, I command you and every of you, jointly and severally, that you or one of you take *J. K.* if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the lord the king at *Westminster*, on to answer to *John Denn* in a plea of trespass, and also to a bill of the said *John Denn* against the said *John King* for 40 *l.* upon promises, according, &c. Hereof fail not. Given under the seal of my office, the day of

Bail for 20l.

A. K. attorney.

By the same sheriff.

If on a *non omittas capias*, say,

"Command you that you omit not by reason of any liberty in my bailiwick, but that you enter the same and take, or one of you take, *J. K.*" &c. Warrant on *non omittas.*

——— } [*As before*] to answer *John Denn* in a plea of On a bill of
to wit. } trespass, and also to a bill of the said *John* to Middlesex.
be exhibited against the said *Richard* for 40 *l.* on promises, according, &c.

——— } [*As before*] by virtue of His Majesty's writ to Warrant on a
to wit. } me directed, I command you, and every of you, special *capias.*
jointly and severally, that you take, or one of you take, *John King*, if he be found in my bailiwick, and him safely keep, so that I may have his body before the lord the king, on wheresoever His Majesty shall then be in *England*, to answer *John Denn* in a plea of trespass on the case, to the damage of the said *John Denn* of 40 *l.* Hereof fail not. Given, &c.

Bail for 20l.

By the same sheriff.

[*As before*] to answer *John Denn* in a plea of trespass, and also that the said *John King* may answer the said *John Denn*, according to the custom of the king's court of Common Bench, in a certain plea of trespass on the case upon promises, to the damage of the said *John Denn* of 40 *l.* Hereof fail not. Given, &c. Ditto on a *capias* in the C. P.

Bail for 20l.

By the same sheriff.

Warrant on a
ca. sa. in debt.

——— } [*As before*] to satisfy *John Denn*, as well a
to wit. } certain debt of 500*l.* which the said *John Denn*,
lately in the king's court before the king himself at *West-*
minster, recovered against the said *Richard Fenn*, as also
63*s.* which in the said court were awarded to the said
John Denn for his damages, costs and charges, whereof the
said *Richard Fenn* was convicted. Hereof fail not. Given
&c.

Levy 253 *l.* besides poundage }
and officer's expenses. }

Ditto on a *fi. fa.*
n debt.

[*As before*] I command you, and every of you, jointly
and severally, that of the goods and chattels of *John Doe*,
in my bailiwick, you cause to be made as well a certain
debt of 500 *l.* which *Richard Roe* lately recovered against
the said *John Doe* in the king's court before the king him-
self at *Westminster*, as also 63*s.* which in the same court
were awarded to the said *Richard* for his damages, costs
and charges by him laid out about his suit in that behalf
expended, whereof the said *John Doe* was convicted; so
that I may have those monies before His Majesty at
Westminster, on to render to the said *Richard Roe*
for his debt and damages aforesaid. Hereof fail not.
Given, &c.

Levy 353 *l.* besides, &c. }
A. K. attorney. }

By the same sheriff.

Ditto on a ca.
sa. in *assumpsit*.

[*As before*] satisfy *John Denn* of 500 *l.* which the said
John Denn, lately in our court before us at *Westminster*,
recovered against the said *Richard Fenn* for his damages,
which he sustained as well by means of not performing
certain promises and undertakings lately made by the said
Richard Fenn to the said *John Denn*, as for his costs and
charges by him about his suit in that behalf expended,
whereof the said *Richard Fenn* was convicted. Hereof fail
not. Given, &c.

Levy 500 *l.* }
A. K. attorney. }

By the same sheriff.

Ditto on a *fi fa.*
in *assumpsit*.

[*As before*] that of the goods and chattels of *Richard*
Fenn, in my bailiwick, you cause to be made 500 *l.* which
John Denn, lately in our court before us at *Westminster*,
recovered against the said *Richard Fenn* for his damages
which he sustained as well by means of the not performing
certain promises and undertakings lately made by the said
Richard Fenn to the said *John Denn*, as for his costs and
charges by him about his suit in that behalf expended,
whereof the said *Richard Fenn* was convicted, so that I
may have that money before His Majesty at *Westminster*,

on next after to render to the said *John* for his damages, costs and charges aforesaid. Hereof fail not. Given, &c.

Levy 500 *l*.

By the same sheriff.

Middlesex, } *John Denn* esq. and *Richard Fenn*, esq. sheriff Warrant on
to wit. } of the said county, to *I. K.* and *B. C.* my *elegit*.
bailiffs, greeting: By virtue of His Majesty's writ of *elegit*
to me directed, I command you and each of you, jointly
and severally, that without delay you or one of you seize
and take all the goods and chattels of *Richard Roe*, (except
the *oxen* and *beasts* of his plough), in my bailiwick, of
which the said *Richard Roe*, on the day of
in the year of the reign of his present Majesty
was, or at any time since hath been seised, so that I may,
by the oath of good and lawful men of by bailiwick, cause
the same to be extended and appraised, and the said goods
and chattels to be delivered to *John Doe* in the said writ
named, to hold to him, as his own proper goods and chat-
tels, towards satisfying his debt and damages in the said
writ mentioned, and that you forthwith certify the same to
me, so that I make the same appear before the lord the
king at *Westminster*, on Hereof fail not. Given, &c.

Levy 500 *l*.

By the same sheriff.

To *A. B.* my bailiff of the hundred of *C*.

——— } *E. F.* esq. sheriff of the county aforesaid. By Ditto on a
to wit. } virtue of His Majesty's writ to me directed, I *venire facias* in
command you that you summon *C. D.* to appear before the the Exchequer.
barons of His Majesty's *Exchequer* at *Westminster*, on
next coming, to answer *C. D.* His Majesty's debtor,
of a plea of trespass on the case, whereby, &c. Dated,
&c. By the same sheriff.

If in the *C. P.* on an original, say,

Before His Majesty's justices of the bench at *Westmin-*
ster, on the morrow of *All Souls*, to answer *C. D.*
in a plea of trespass. Dated, &c.

To *A. B.* my bailiff of the hundred of *C*.

——— } *E. F.* esq. sheriff of the county aforesaid. By Ditto on a
to wit. } virtue of His Majesty's writ to me directed, *distringas* in
I command you that you distrain *C. D.* by all his lands the Exchequer.
and chattels in my bailiwick, so that neither he, nor any
person for him, lay their hands upon the same, until I have
another command thereof from his said Majesty, and that
I may answer to His Majesty for the issues thereof, so that
the said *C. D.* be before the barons of His Majesty's *Ex-*

chequer at Westminster, on next coming, to answer
C. D. His Majesty's debtor in a plea of trespass on the
 case, whereby, &c. Dated, &c.

By the same sheriff.

Warrant in the
 King's Bench
 by original.

——— } [*As in the other*] so that he be before the lord
 to wit. } the king, on the morrow of *All Souls*, where-
 soever His Majesty shall then be in *England*, to answer
H. H. of a plea of trespass on the case to the damage of
 the said *H.* of 300*l.* Dated, &c. *A. K. attorney.*

Warrant on a
sci. fa. at the
 suit of the
 king in the
 Exchequer.

[*As before*] That you give notice to *A. B.* that he may
 appear before the barons of His Majesty's *Exchequer*, at
Westminster, on next coming, to show cause why
 His Majesty should not have execution against him for
 100*l.* which His Majesty recovered against him, according
 to the tenor of the said writ. Hereof fail not. Dated, &c.

By the same sheriff.

The like in the
 King's Bench.

[*As before*] That you give notice to *A. B.* that he may
 appear before the king at *Westminster*, on to show
 cause why *C. D.* should not have his execution against
 him for 50*l.* debt, and 63*s.* damages, which he recovered
 against him in His Majesty's court before the king himself,
 according to the tenor of the said writ. Hereof fail not.
 Dated, &c.

By the same sheriff.

The like on a
sci. fa. against
 bail by bill.

[*As before*] That you give notice to *G. D.* and *E. F.*
 bail of *C. D.* that they may appear before the king at
Westminster, on to show cause why *A. B.* should
 not have execution against them for 100*l.* damages, reco-
 vered against the said *C. D.* in His Majesty's court, before
 the king himself at *Westminster*, according to the force,
 form and effect of a certain recognizance acknowledged by
 them the said *G. D.* and *E. F.* for the said *C. D.* in the
 said court. Hereof fail not. Dated, &c.

By the same sheriff.

To, &c. my bailiff of, &c.

Warrant on
 the *long writ*,
 No. 5, on
 the distringas
 process issued
 out of the
 Exchequer.

——— } By virtue of His Majesty's writ to me directed,
 to wit. } I command you and every of you, jointly, &c.
 that you or one of you levy of the goods and chattels, lands
 and tenements, in my bailiwick, of the persons named in the
 schedule hereunto annexed, the several sums of money set
 against their respective names, and which are on them
 respectively charged in the schedule to the said writ an-
 nexed, so that I may have the said money before the
 barons of His Majesty's *Exchequer* at *Westminster*, from
 time to time as the same shall be levied; and if the goods
 and chattels lands and tenements of the said several per-
 sons are not sufficient for the payment of the said several
 sums of money, then take the bodies of the said several

persons [*peers and peeresses excepted*] and keep them in safe custody until they shall fully satisfy His Majesty the said debts. You shall also distrain the several executors and administrators of such of the said persons as are dead, and the possessors of the goods and chattels which were theirs at the times of their respective deaths, and likewise the heirs and terre-tenants of the lands and tenements which they were seised of on the several days in the several years when they respectively first became indebted to His Majesty the several sums in the said schedule respectively mentioned, or at any time since, by all their lands and chattels in my bailiwick, so that they, nor any for them, lay hands thereon, until I shall otherwise command you, so that I may answer to His Majesty the issues of the said lands; and so that I may have their bodies before the barons of His Majesty's *Exchequer* at *Westminster*, on, &c. to answer to His Majesty the several debts respectively charged upon them in the said schedule: And what you shall do herein make known to me. Dated, &c.

To, &c. By virtue of His Majesty's writ to me directed, I command you and every of you, &c. that you omit not, &c. that you levy of the goods and chattels in my bailiwick, of the several persons named in the schedule hereto annexed, the several sums of money set against their respective names, and which are charged upon them and each of them in the schedules to the said writ annexed, or required from them or any of them, so that I may have that money before the barons of His Majesty's *Exchequer* at *Westminster* without delay; and if the said goods and chattels of the said persons, or any of them, are not sufficient for payment of the said several sums of money set against their respective names, and charged upon them as aforesaid, then take the bodies of the said several persons, and each of them, not having any goods sufficient as aforesaid, [*peers, lords and ladies only excepted*], wheresoever you shall find them in my bailiwick, so that I may keep them in safe custody in His Majesty's prison, until they have fully satisfied His Majesty the several debts charged upon them, and each of them, in the said schedules. You shall also distrain all the lands and chattels in my bailiwick of all the executors of the several last wills and testaments of the said several persons deceased, and each of them; also the lands and chattels of the heirs and tenants of the lands and tenements which were lately theirs, so that I may have their bodies before the barons of His Majesty's *Exchequer* at *Westminster*, on next ensuing, to answer to His Majesty for the said several persons the several debts aforesaid:

Warrant on
the *Exchequer*
process, No. 5.
for recogni-
zances forfeited
and arrears of
taxes.

And what you shall do herein forthwith make appear to me.
Dated, &c.

Warrant on a
capias utlagatum.

————— } *J. B. esq. and V. U. esq. sheriff of the county*
to wit. } aforesaid, to *John Doe* and *Richard Roe*, my
bailiffs of in the said county, greeting: By virtue
of the king's writ to me directed, I command you and every
one of you, jointly and severally, notwithstanding any
liberty in my county, that you enter the same, and that
you, or any one of you, take all the goods and chattels,
lands and tenements of *Richard Fenn*, who stands out-
lawed at the suit of *John Denn*, so that by the oath of good
and lawful men of the said county I may diligently inquire
of the goods and chattels, lands and tenements of the said
Richard Fenn, by you so taken; and by appraisement, ac-
cording to the true value thereof, I may cause the goods
and chattels aforesaid to be seised and taken into His Ma-
jesty's hands: and what you, or any of you, shall do herein,
you, or one of you, shall forthwith make known to me, so
that I may thereof certify to His Majesty's justices at
Westminster on : and I further command you, and
every one of you, notwithstanding any liberty in my county,
that you enter the same, and that you, or any one of you,
do take the said *Richard Fenn*, if he shall be found in my
bailiwick, and him safely keep, so that I may have his body
before His Majesty's said justices, at the day aforesaid, to
do and receive what the king's court shall adjudge con-
cerning him in this behalf. Dated the day of

By the same sheriff.

Warrant on a
ne exeat regno.

That you forthwith arrest the body of *A. B.* and keep
him safe, until he find sufficient bail or security for the sum
of *l.* that he will not go, or attempt to go, into parts
beyond the seas, without leave of His Majesty's court of
Chancery; and in case he refuse so to do, I command you,
each and every of you, that you commit him to His Ma-
jesty's next prison within my bailiwick, there to be kept
in my custody until he shall do it of his own accord.
Dated, &c. Bail for *l.* By the same sheriff.

To *A. B.* and all other my bailiffs.

Warrant to
quit possession
on a *fi. fa.*

————— } Quit possession of the goods and chattels of
to wit. } *A. B.* notwithstanding my warrant to you or
any of you directed, grounded on a writ of *fi. fa.* to me
directed, returnable before the lord the king at *Westminster*,
on next after at the suit of *J. K.* for 100 *l.* debt,
and 63s. damages. Indorsed to levy 53 *l.* 19s. besides
officer's fees, sheriff's poundage, &c. *J. K.* attorney. And
for your so doing this is your warrant. Dated, &c.

——— } *T. B.* esq. sheriff of the county aforesaid, to
to wit. } the keeper of His Majesty's gaol of the said
county. Discharge out of your custody the body of *W. W.*
if detained only at the suit of *C. C.* by virtue of a writ of
latitat, issued out of His Majesty's court of *King's Bench*
at *Westminster*, and returnable there on next after
to answer the said *C. C.* in a plea of trespass, and
also a bill of the said *C. C.* for 100*l.* upon promises. Bail
for 50*l.* Aud for your so doing this shall be your warrant.
Given, &c. By the same sheriff.

Warrant on a
supersedeas,
to discharge
the defendant
out of custody.

——— } *G. A.* esq. sheriff of the county aforesaid, to
to wit. } *T. B.* and *C. D.* my bailiffs greeting: By virtue
of His Majesty's writ to me directed, I hereby com-
mand you that you command *C. L.* and *J. K.* that they
justly, and without delay, render to *A. B.* and *J.* his wife,
the reasonable dower of the said *J.* which falleth to her
out of the freehold which was of *T. M.* heretofore her
husband, in the parish of in whereof she
hath nothing, so they say, and whereof they complain
that the aforesaid *C. L.* and *J. K.* now defendants, de-
forceth them, and unless they shall so do, and the said
A. B. and *J.* shall give me security that their suit shall be
prosecuted, then summon, by good summoners, the said
C. L. and *J. K.* now defendants, that they be before the
justices of our lord the king at *Westminster*, on
to show wherefore they will not do it. Hereof fail not.
Given, &c. By the same sheriff.

Warrant on a
writ of dower.

To, &c.

——— } Summon *G. P.* esq. (having privilege of par-
to wit. } liament) that he be before His Majesty at
Westminster, on next after to answer *J. K.*
in a plea of trespass on the case, upon promises, to the
damage of the said *J. K.* of 50*l.* Hereof fail not. Given,
&c. By the same sheriff.

On a writ of
summons
against a
member.

——— } *G. K.* esq. sheriff of the county aforesaid, to
to wit. } *A. B.* my bailiff, greeting: By virtue of His
Majesty's writ to me directed, I command you, that you
distrain *J. K.* esq. (having privilege of parliament) by all
his lands and chattels in my bailiwick, so that neither he,
nor any person for him, may lay their hands upon the
same, until I have another command thereof from his said
Majesty, and that I may answer to His said Majesty for
the issues thereof, so that the said *J. K.* be before His
Majesty on wheresoever, &c. to answer *C. D.* of
a plea of trespass on the case, to the damage of the said
C. D. of 50*l.* Hereof fail not. Given, &c.

Warrant on
a *distringas*
against a
member.

On a writ of
possession.

——— } *A. K.* esq. sheriff of the county aforesaid, to
to wit. } *A. B.* and *C. D.* my bailiffs, &c. greeting: By
virtue of His Majesty's writ of *habere facias possessionem*
to me directed, I command you, that you deliver unto
John Doe possession of his term yet to come of and in
one messuage, &c. [*here set forth the premises*] with the
appurtenances, in the parish of *H.* in the said county,
which the said *John Doe* hath recovered against *Richard*
Roe in His Majesty's court, before the king himself, and
render me an account herein, so that I may make the same
appear before the king at *Westminster*, on next
after Hereof fail not. Given, &c.

By the same sheriff.

To *B. K.* my bailiff.

Warrant on
a *pone* in
replevin.

——— } Give notice to *A. B.* to be and appear before
to wit } the king's justices at *Westminster*, on
that he may be there ready to proceed in the plaint which
is in my county, without the king's writ, between the said
A. B. plaintiff, and *C. D.* defendant, of the goods and
chattels of the said *A.* taken and unjustly detained, as it
is said. Dated, &c.

Warrant to
summon inha-
bitants on
statute of hue
and cry on an
original.

——— } *E. R.* esq. &c. to *J. P.* and *J. R.* my bailiffs,
to wit. } greeting: By virtue of His Majesty's writ to
me directed, I command you, and each of you, that you
summon the inhabitants of the hundred of *R.* in the
county aforesaid, to be and appear before our sovereign
lord the king, on wheresoever, &c. to answer as
well to our said lord the king, as to *G. G.* in an action
brought against the said hundred, on a statute made in the
13th year of the reign of His Majesty king *Edward* the
first, for a robbery committed on him the said *G. G.* in the
parish of *T.* and hundred of *R.* aforesaid, for, &c. [*follow*
the words of the original], in monies numbered, being the
proper monies of the said *G. G.* And this, &c. Given, &c.

Summons to a
person to serve
on the grand
jury at sessions.

———, *ss.* By virtue of a warrant from *E. S.* sheriff,
&c. I do hereby summon and warn you to be and appear
before the justices at the next general quarter sessions of
the peace, to be holden at *A.* in the said county, on
the day of next, at o'clock in the forenoon,
then and there to serve on the grand jury. Dated, &c.
A. B. bailiff.

Warrant on a
writ of *excom-*
municato
capicndo.

———, *ss.* *E. S.* esq. sheriff, &c. to *J. B.* &c. my bailiffs,
greeting: By virtue of the writ of our sovereign lord the
king to me directed, I command you, and every of you,
that you or one of you attach *G. L.* by his body, accord-
ing to the custom of *England*, if he shall be found in my

bailiwick, and him under safe and secure conduct lead, or cause to be led, to the gaol of our said lord the king, for my county there, in prison to be safely kept, until he shall have made satisfaction to the holy church, as well for the contempt, as for the injury by him done unto it : And how you shall execute this warrant forthwith make appear to me, so that I may certify the same to His Majesty, on wheresoever His Majesty shall then be in *England*, that His said Majesty may cause further to be done in the premises what of right and according to the form of the statute in such case lately made and provided shall be meet to be done, &c. Given, &c.

———, *ss. E. S. esq. &c.* to the keeper of the gaol of the said county, and also to *A. B.* and *C. D.* my bailiffs, greeting : By virtue of His Majesty's writ to me directed, I command you, and each of you, jointly and severally, that you or one of you do, on His Majesty's behalf, make proclamation in all places within my bailiwick, as well within liberties as without, wheresoever it shall seem meet, that *F. G.* clerk, do upon his allegiance, on next ensuing, personally appear before the king, in his court of *Chancery*, on ———, and in the mean time, if you can find him the said *F. G.* attach him, so that I may have his body before the said lord the king, in his said court, at the time above mentioned, to answer His Majesty, as well touching a contempt which he hath, as it is alleged, committed against His said Majesty, as touching those matters which shall be then and there objected against him, and further to perform and abide such order as His Majesty's said court shall make in this behalf, &c. Given, &c.

Warrant on contempt for not putting in an answer in the court of Chancery.

Take the words of the writ.

———, *ss. J. G. esq. sheriff of the county aforesaid,* to the keeper of the gaol of the said county, as also to *S. H.* and *V. H.* my bailiffs, for this purpose only, greeting : By virtue of the writ of our sovereign lord the king, to me directed, I command you, and each of you, jointly and separately, that you omit not by reason of any liberty in my bailiwick, but that you enter the same, and take *B. H.* if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the barons of His Majesty's *Exchequer* at *Westminster*, on the ——— day of ——— next, to answer His Majesty concerning certain articles, whereon he is impeached, by an information exhibited against him before the said barons by His Majesty's attorney-general, for the forfeiture of 60*l.* 7*s.* for the offence in the said information mentioned, &c.

On an Excise process out of the Exchequer.

Bail for 202*l.* 10*s.*

By the same sheriff.

S. S. solicitor for the Excise.

On *habeas corpus ad testificandum*.

———, ss. *I. G.* esq. sheriff, &c. to the keeper of the gaol of the said county, greeting: By virtue of His Majesty's writ to me directed, I command you, that you have the body of *E. W.* detained in my prison under your custody, by whatsoever name he may be charged in the same, under safe and sure custody, before the justices of the lord the king assigned to hold the assizes in and for the county of _____ at the town of _____ in the said county, in the *great hall of pleas* there, on _____ the _____ day of _____ next, by _____ of the clock in the forenoon, then and there to testify the truth according to his knowledge in a certain cause now depending before the king's justices, and then and there to be tried between *I. C.* plaintiff, and *I. S.* defendant, on the part of the said *I. C.*, and immediately after the said *E. W.* shall have then and there given his testimony before the said justices, to return him the said *E. W.* to the said prison under the like safe and secure conduct. Herein fail not. Given, &c.

Warrant on special original.

———, ss. *A. B.* esq. sheriff of the county aforesaid, to the keeper of the gaol of the said county, and also to *John Doe* and *Richard Roe*, my bailiffs, greeting: By virtue of a writ of our sovereign lord the king to me directed, I command you, jointly and severally, that ye take, or one of you take, *C. D.* esq. if he be found in my bailiwick, and him safely keep, so that I may have his body before our lord the king on _____, wheresoever, &c. to answer *E. F.* in a plea of trespass upon the case, upon several promises and undertakings, to the damage of the said *E. F.* of 300*l.* as it is said. Bail for _____. Hereof fail not, as you will answer at your peril. Given under the seal of my office, the _____ day of _____

Writ dated the same day, } By the same sheriff.
A. B. for *E. F.* }

Beware the defendant be not privileged or protected. This warrant is allowed for one defendant, and no more; and to be executed by no bailiffs but those who have given the said sheriff security.

Summons on a special original.

———, ss. To *A. B.* and *C. D.* my bailiffs, &c. Summon *C. D.* that he be and appear before our lord the king in wheresoever, &c. for in *C. P.* [before our justices at *Westminster*, on _____] to answer *J. K.* in a plea of trespass on the case to the damages of the said *J. K.* of _____ Dated, &c.

Notice to be left by officer.

E. F. You are served with this process at the suit of *G. H.* to the intent that you may appear by attorney, in

His Majesty's court of Common Pleas at *Westminster*, at the return thereof, being the day of 18
in order to your defence in this action. And take notice, that in default of your appearance, the said *G. H.* will, cause an appearance to be entered for you, and proceed thereon as if you had yourself appeared by your attorney.

Defendant is not personally summoned.

———. To *A. B.* and *C. D.* my bailiffs. Distrain *E. F.* by all his lands and chattels in my bailiwick, so that I may have him before the king's justices of the *Bench*, at *Westminster*, on [or in *K. B.* before our lord the king, wheresoever, &c.] to answer *G. H.* of a plea of trespass. Dated, &c. Levy 40*s.*

Warrant on a *distringas*.

I. K. attorney, &c.

C. H. sheriff.

In the court of [specifying the court in which the suit shall be depending] between *A. B.* plaintiff, and *C. D.* defendant [naming the parties]. Take notice, that I have this day distrained upon your goods and chattels for the sum of 50*s.* in consequence of your not having appeared by your attorney in the said court at the return of a writ of returnable there on the day of and that in default of your appearing to the present writ of *distringas* at the return thereof, being the day of the said *A. B.* will cause an appearance to be entered for you, and proceed thereon as if you had yourself appeared by your attorney. *E. F.*

Notice to be served on defendant by officer executing *distringas*.

To *C. D.* the above- } The name of the sheriff's officer.
named defendant. }

As the fees payable to the sheriffs (except poundage, which is settled by act of parliament) vary in almost every county, it would rather tend to mislead than instruct if any table of fees was attempted to be given. For the general rules respecting them, *vide* the head *Sheriff's Fees*, page 155; a few, however, taken from the office of the sheriff of *Surrey*, are here subjoined.

Fees to the sheriffs of counties for warrants.

The sheriff cannot charge more than 2*s.* 6*d.* on any warrant upon a *special capias*, summons or original bill, *venire* out of the *Exchequer*, *sci. fa.*, *ne exeat regno*, *supersedeas*, *vend. expon.*, attachments, *distringas*, *elegit*, *fi. fa.*, *cap. sa.*, or other execution, though he recite his whole writ.

But on writs of *non omittas* and *capias*, issued for the king's debt on customs or excise forfeitures, they charge five shillings.

On a *latitat* or *capias* they charge 2s. 6d. for a warrant; *Surrey, Essex* and *Kent*, 1s. 6d. If there is a discharge to the gaoler on a *supersedeas*, 5s. 6d.

	£.	s.	d.
For attending to strike a special jury -	-	2	2 -
For a view - - - - -	-	2	2 -
Attendance at the trial - - -	-	1	1 -
For summoning a jury upon a commission of lunacy - - - - -	-	3	3 -
For an inquisition on a writ of inquiry in <i>Mid-</i>			
<i>dlesex</i> - - - - -	-	1	11 6
Ditto in <i>London</i> - - - - -	-	1	11 6
Inquisition on outlawry (one finding) -	-	1	15 6
- - - - <i>elegit</i> - ditto -	-	1	15 6
- - - - extent - ditto -	-	1	15 6
For more than one finding - - -	-	-	3 8

APPENDIX OF FORMS

TO

OFFICE OF SHERIFF.

*An Indenture for setting over Prisoners and Writs
between the old and new Sheriff.*

THIS indenture, made the day of in the year of the reign of our sovereign lord, &c. and in the year of our Lord , between *J. O.* esq., late sheriff of the county of , of the one part, and *W. K.* esq., present sheriff of the said county, of the other part, witnesseth, that the said late sheriff hath delivered, and the said present sheriff hath received from the said late sheriff at the time of his going out of his office, the bodies of the several persons hereinafter named, charged with the cause or causes hereinafter mentioned, (that is to say,) *A. B.* was taken the day of by virtue of a writ of *capias ad satisfaciendum*, returnable before the king's justices at *Westminster* in fifteen days from the day of *Easter*, to satisfy *C. D.* for 100*l.* which in the king's court, before the king's justices at *Westminster*, were awarded to the said *C. D.* for his damages, &c. wherof the said *A. B.* is convicted. *Corbet and Hardy*; he is detained by virtue of another writ of *capias ad satisfaciendum*, returnable before the lord the king at *Westminster*, on *Monday* next after the morrow of the *Ascension*, to satisfy *T. H.* for 100*l.* which in the king's court, before the king himself at *Westminster*, were awarded to *T. H.* for his damages, &c. whereof the said *A. B.* is convicted. *Johnson* for *Hatt*; he is also detained by virtue of a writ of attachment, returnable before the barons of the king's Exchequer at *Westminster*, on the day of last, to answer the lord the king concerning divers trespasses, contempts and offences by

him lately done and committed, at the suit of *R. I.* for not paying the several sums of, &c. making together the sum of 200*l.* costs taxed. *Lane.*

In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

I acknowledge to have in my custody the bodies of the several persons hereinbefore named, except *A. B.* and *C. D.* against whose names the word *discharged*, and *J. B.* deceased, is written in the margin of this deed; the prisoners in my custody being in number 125. Witness my hand the day of 18 .

Witness, ———

J. K. Gaoler.

Deputation from the High Sheriff to the Under-Sheriff, to be executed before the first Day of Easter Term, and filed in the Treasury of the Remembrancer's Office, Paper-building's, King's-bench-walks.

——— } I CERTIFY the barons of His Majesty's court
to wit. } of Exchequer, that I, *A. B.* esq., sheriff of the
said county, have deputed, constituted and appointed, and in
my place put *C. D.* of, &c. gentleman, my deputy, to give an
account of the issues and profits of my office of sheriffwick
only during so long time as I shall continue sheriff of the said
county; according to the course of the Exchequer, as in such
case is required, I have duly authorized and appointed the
said *C. D.* my under-sheriff of the said county, to execute
the said office for me, and in my name, during my sheriffalty.
In witness whereof I have hereunto set my hand and seal of
office, this day of

Letter of Attorney from the High-Sheriff to his Under-Sheriff, to receive his Patent Money.

WHEREAS by an act of parliament made and passed in the third year of the reign of his late Majesty king *George* the first, intituled, "An Act for the better regulating the office of sheriff, and for ascertaining their fees, for suing out their patents, and passing their accounts," certain sums of money are ordered to be paid to the sheriffs of *England* and *Wales* for the purposes in the said act mentioned: And whereas the sum of 90*l.* 5*s.* is by the said act ordered to be paid to the sheriff of the county of ; *Know all men* by these presents, that I, *A. B.* esq. sheriff of the said county of for the year ending at in the year of His present Majesty, *Have* made, ordained, constituted and

appointed, and by these presents *Do* make, ordain, constitute and appoint *C. D.* of, &c. and *E. F.* of, &c. gentlemen, my true and lawful attornies, jointly and severally, for me, and in my name, to ask, demand and receive of and from the lords commissioners of His Majesty's Treasury, or of or from any other person or persons concerned in His Majesty's receipt of Exchequer, the said sum of 90*l.* 5*s.* and for me, and in my name, to give such receipt or acquittance for the same as in such case is usual : And further to do and perform all such other matters and things as shall be necessary in this behalf. In witness, &c.

Scaled, &c.

Indenture of Covenants between the High Sheriff and Under-Sheriff.

THIS indenture, made the day of in the year of the reign of our sovereign lord, &c. and in the year of our lord 18 , between the right worshipful *C. A.* and *R. G.* esquires, two of the aldermen of the city of *London*, of the one part, and *J. R.* and *C. B.* of the city of *London*, gentlemen, of the other part, witnesseth, that they the said *C. A.* and *R. G.* being elected and chosen, and having on the day of the date hereof, taken the office of sheriff of the county of *M.* for the whole year, commencing from the day of the date hereof, in consideration of the assured hope and trust which they the said *C. A.* and *R. G.* have that the said *J. R.* and *C. B.* will take care that the office of under sheriff be honestly, uprightly, duly and sufficiently discharged within the said county of *M.*, and that the said sheriff shall be free and discharged from all charges and damages whatsoever relating to the said office, and for the considerations hereafter in these presents mentioned, they the said *C. A.* and *R. G.* have been pleased and contented to depute, ordain, constitute and make the said *J. R.* and *C. B.* to be their under-sheriff of the said county of *M.* for the same time and term, and so long as they or either of them shall continue in the said office ; but nevertheless, so as that the said office of under-sheriff shall be executed by and with the joint concurrence and direction of them the said *J. R.* and *C. B.* and not otherwise, and also subject to the proviso or power hereinafter mentioned, of displacing or removing the said *J. R.* and *C. B.* from the said office of under-sheriff, as hereinafter is mentioned. And the said *C. A.* and *R. G.* the more effectually to empower the said *J. R.* with the concurrence of the said *C. B.* as aforesaid, to execute the said office of under-sheriff of the said county of *M.* have, and each of them *hath* (as much as in them lieth,

and they lawfully may) authorized, constituted, deputed, and *do*, and each of them *doth*, authorize, constitute, depute and appoint him the said *J. R.* and all and every such clerk and clerks as he the said *J. R.* with such concurrence as aforesaid shall employ and appoint in the said office of undersheriff, by writing under the hand and seal of the said *J. R.* in the name of them the said *C. A.* and *R. G.* as sheriff of the said county of *M.* upon the request of any plaintiff or plaintiffs, to sign, seal, execute, and as their act and deed deliver; and all and every assignment and assignments of any bail-bond or bail-bonds, that shall or may, at any time or times hereafter, during their sheriffalty, be taken in their names as sheriff of the said county of *M.* from any defendant or defendants, by virtue of any writ, precept or precepts, or mandate whatsoever, which shall be directed to them for the execution thereof; *and also* for such deputy or deputies to take any inquisitions requisite on all process requiring the same, and as shall be directed to the sheriff of the county of *M.* during the sheriffalty of the said *C. A.* and *R. G.*, in consideration whereof, and for other good causes and considerations them thereunto moving, they the said *J. R.* and *C. B.* for themselves severally, and for their several and respective heirs, executors and administrators, *do*, and each of them *doth*, covenant, promise and grant, to and with the said *C. A.* and *R. G.* respectively, and their respective executors and administrators, by these presents, in manner following, (that is to say,) that he the said *J. R.* with such concurrence as aforesaid, shall well and truly, honestly and sufficiently, by and during the said term and time, and so long as the said *C. A.* and *R. G.* or either of them, shall continue in the said office of sheriff of the said county of *M.* execute and duly perform the same, carefully, well, truly and honestly demean and behave himself therein, and shall, during the said time and term, well, truly, honestly and sufficiently, with the concurrence of the said *C. B.* as aforesaid, execute, or cause and procure to be executed, all and every writ and writs, process and processes, warrant and warrants, precept and precepts, mandate and mandates, directed, or to be directed, from our sovereign lord the king, his heirs or successors, and from and out of all and every or any of His Majesty's courts at *Westminster*, or any other courts elsewhere, or otherwise, or from any commissioner or commissioners, justice or justices of the peace, or other person or persons, officer or officers, which have or shall have authority thereunto, to the said sheriff of the said county of *M.* which during the said time or term shall be or to be executed; and of the same and every of them, in all due, fit and convenient time, shall make true and

sufficient returns, at the several days, times and places, according as the said *C. A.* and *R. G.* by the said writs, processes, warrants, precepts and mandates, or any of them, is or shall be required, limited or appointed to return the same; and shall also by and during the said time and term, and at all times afterwards, save, keep harmless and indemnified, the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, and their and each of their goods, chattels, lands, tenements, hereditaments and estate, and every part and parcel thereof, of and from all manner of action and actions, cause and causes of actions, suits, fines and amerciaments, pains, sum and sums of money, penalties, contempts, forfeitures, judgments, executions, damages, costs and losses, and of and from all and every other troubles, charges and incumbrances whatsoever, that shall or may happen, arise, grow, put unto, or shall be assessed, imposed, set or taxed upon or against the said *C. A.* and *R. G.* or either of them, or upon the sheriff of *M.* at any time or times, for or by reason of the executing, not executing, returning, not returning, or mis-returning, or the not due returning or executing of any of the said writ or writs, process or processes, mandate or mandates, precept or precepts, warrant or warrants, or by reason of any suits or disputes as may hereafter arise between the said *J. R.* and *C. B.* or either of their executors or administrators, and without any trouble, costs, charges, damages or expenses therefor to be sustained, incurred or expended by the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators, in, about, for, touching or concerning the same; and shall also from time to time, and at all times hereafter, give notice unto the said *C. A.* and *R. G.* of all and every writ or writs that shall be sued or brought against them, or either of them, that shall come to the said *J. R.* and *C. B.* or either of them, their or either of their deputies, clerks or servants; or whereof the said *J. R.* and *C. B.* or either of them shall have notice, and shall not appear, or cause any appearance to be made or entered, or any common bail to be filed upon any writ or action that shall be brought against the said *C. A.* and *R. G.* or either of them, without the privity or allowance of them the said *C. A.* and *R. G.* or such of them against whom any such writ shall be brought: *And further*, that the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, or any other person or persons for or under them, or either of them, in the name or names of the said *C. A.* and *R. G.* or either of them, shall not, at any time or times hereafter, during the said term or terms, make or cause to be made any return or returns of or to any writ or writs, process or processes, precept or precepts,

warrant or warrants, mandate or mandates whatsoever, touching or in anywise concerning the liberties or franchises of the city of *London*, in the name or names of the said *C. A.* and *R. G.* as sheriff of the said county of *M.* without timely acquainting them the said *C. A.* and *R. G.* therewith, and taking and pursuing their just and lawful directions therein, if they upon or after such notice in due time give such directions therein: *And also*, that they the said *J. R.* and *C. B.* or one of them, their or one of their executors or administrators, shall and will, at all times hereafter, acquit and discharge, or otherwise well and sufficiently save, keep harmless and indemnified the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, and their and each of their goods and chattels, lands, tenements and estates, of and from all and every suits, charges, losses, payments, damages, fines, amerciaments and hindrances whatsoever, that shall or may, at any time or times, during the said time they shall continue in the said office, or at any time then after, arise, happen, grow or come unto, or be brought against them the said *C. A.* and *R. G.* or either of them, their or either of their heirs, executors or administrators, goods, chattels, lands or tenements, for or by reason of any rescue or rescues, escape or escapes, or letting any prisoner or prisoners, voluntarily or negligently, or otherwise, to go at large or escape, or for not taking sufficient bond or bonds, with sufficient and good security; or for persons arrested or to be arrested; or of or for prisoners bailable; or of refusing to accept of bond or bonds, in such manner as by law is or shall, during the sheriffalty of the said *C. A.* and *R. G.*, be required of any person or persons arrested, or to be arrested, for any matters or causes, for which he, she or they, shall or should be bailed by law; or for the making, or making amiss, or not due making, of all or any assignment of all or any bail-bond or bail-bonds; or for not putting any warrant or warrants of attorney, in any of the courts of record at *Westminster*, or elsewhere; for or by reason of any negligence, misfeazance or misfeazances, nonfeazance or nonfeazances, abuses, misdemeanors, commission or commissions, omission or omissions, default, delay or contempt; or for or by reason of any other matter, cause or thing, that should or ought, at any time, in any kind whatsoever, to be done and performed by the said *J. R.* and *C. B.* or either of them, as under-sheriff of the said county of *M.*, or by their or either of their deputy or deputies, clerk or clerks, bailiff or bailiffs, servant or servants, or by reason of his or their, or any of their not doing, over-doing or neglecting, his or their duty or duties; or for or in respect of any matter, cause or thing whatsoever hereafter to be done or omitted to be done, by him, them or any

of them, concerning the said office : *And moreover*, that they the said *J. R.* and *C. B.* or one of them, shall from time to time, and at all times when thereunto required, as soon as conveniently may be, during the said time and term, and until the said *C. A.* and *R. G.* shall be duly discharged from the said office of sheriff, deliver, or cause to be delivered, unto the said *C. A.* and *R. G.* or one of them, a true account or inventory, in writing, of all extents and judicial writs or process whatsoever, that shall come to the hands of the said *J. R.* and *C. B.* or either of them, or of their or either of their agent or agents, clerk or clerks, deputy or deputies, or any person or persons appointed to act for, by or under them, or any of them, to be executed with the teste and return of the same, and the sums of money therein specified, and the name or names of the person or persons against whom such writ or writs, process or processes, shall be issued ; and the person or persons for whom all and every or any such writ or writs, process or processes shall be issued, and what is done upon all and every or any such writ or writs, process or processes ; *and* that they the said *J. R.* and *C. B.* or one of them, shall and will, in the space of ten days next after the levy or receipt by them, or either of them, or their or either of their deputies, shall be made of any sum or sums of money, upon or by virtue of such extents or judicial writs, process or processes, if thereto required, pay, or cause to be paid, the said sum or sums of money to the said *C. A.* and *R. G.* or one of them, or to such person or persons as they shall from time to time nominate and appoint to receive the same, they the said *C. A.* and *R. G.* or one of them, giving a note or precept in writing, under his or their hand or hands, testifying the receipt of all such sum or sums of money as shall be by them, or either of them, so received : *And* that it shall be in the power of the said *C. A.* and *R. G.* notwithstanding any thing in these presents contained, upon complaint to them made of the miscarriage of any bailiff, within the said county of *M.* in the duty of his place, to put out, discharge and displace any such bailiff from his further employment as bailiff, for so much of the said time as shall be then to come : *And* likewise, that the said *J. R.* and *C. B.* or one of them, shall and will, from time to time, and at all times hereafter, give due notice to the said *C. A.* and *R. G.* of all such personal attendances as shall from time to time be required, or requisite to be made by the said *C. A.* and *R. G.* or either of them, in the county of *M.* as sheriff of the said county, and be attending on and assisting to the said sheriff, wherein such personal attendance shall be required : *And* that the said *J. R.* and *C. B.* and each of them, shall be aiding and assisting in the raising and levying such force of men, horses and

arms, within the said county of *M.* as the said *C. A.* and *R. G.* shall be enjoined to raise and levy; and shall from time to time, and at all times, as occasion shall be and require, give their personal attendance on the said *C. A.* and *R. G.* and each of them, for their doing, performing and executing all such thing and things as shall be requisite on their behalf: *And further*, that the said *J. R.* and *C. B.* shall, during the said term or time, well, truly and faithfully do, execute and perform, all and every act and acts, matters, thing and things whatsoever, incident or belonging to the said office of under-sheriff of the said county of *M.*; and to the utmost and best of their means, skill and power, shall and will well and truly levy, collect and gather all and singular such sum and sums of money as do in anywise concern or belong to the said sheriffalty or sheriff of the said county of *M.* and also post-fines, *pro licentia concordandi*, forfeitures, profits, seizures, fee-farm rents, pipe silver, exchequer silver, extracts of all goods of traitors, felonious persons, outlaws, and all and every such sum and sums of money, forfeitures, entries and demands whatsoever, as shall be at any time or times extracted, charged or imposed for the use of our sovereign lord the king, his heirs and successors, or for or by reason of any extracts of writs, process of green-wax, or otherwise, directed out of the court of Exchequer or Crown-office, or any of the courts of record at *Westminster*, or elsewhere, and commanded, directed or appointed to be levied or gathered by the said sheriff of the said county of *M.*, and of the same, and of every of them, and every part thereof, shall in due time, from time to time, make a true and just account, and due satisfaction and payment thereof, to the use of our sovereign lord the king, his heirs and successors, into the receipt of the Exchequer, by tally or tallies, in due form, or into such other courts as the case shall require; *and also*, shall take of the Pell-office a *constat* of every such payment and tally struck; and shall likewise take out and obtain all other acquittances meet and necessary for the manifestation of any such payment, as the case shall require, and all such constats and acquittances shall and will from time to time deliver to the said *C. A.* and *R. G.* or one of them, within six days after every or any such payment made, if thereunto required; *and* shall also from time to time from thenceforth keep harmless and indemnified the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, and their and each of their goods, chattels, lands, tenements and estates, of, from and against our said sovereign lord the king, his heirs and successors, in respect of all and every sum and sums of money to be had, levied or received by the said *J. R.* and *C. D.* or either of

them, for the use of our sovereign lord the king, his heirs or successors, or which ought to be had, levied or received by him the said *J. R.* as under-sheriff, or by the said *C. A.* and *R. G.* as sheriff of the said county of *M.* to and for the use of our sovereign lord the king, his heirs or successors: *And moreover*, that the said *J. R.* and *C. B.* or one of them, their or one of their executors, administrators or assigns, shall and will, at his or their own proper costs and charges, in and by all things join with the secondaries for the time being for both the compters of *London*, and with all other clerks appointed or to be appointed by the said *C. A.* and *R. G.* as sheriffs of the city of *London*, for supplying the said office of under-sheriffs of *London*, commonly called by the name of secondaries of the compters of *London*, or the sheriff's clerks, for the orderly and duly proceeding for the passing the accounts for *London* and *Middlesex*, in one account, according to the statute or statutes in that case made and provided, touching sheriffs accounts; *and shall and will* without delay jointly proceed in the said accounts in one, as well as the particulars thereof, with the auditor or auditors assigned to take the said accounts, as also in passing thereof in one by the like agreement and consent, and also in the declarations thereof before the barons of the said court of Exchequer, and before any other person or persons to be thereunto authorized, and being ready for the declaration thereof, shall also, at the like proper costs and charges of the said *J. R.* and *C. B.* or one of them, procure the said auditor and auditors to attend some or one of the barons to take the said declaration, and to make the usual allowances of the said accounts, for so much thereof as appertains to the said sheriff or county of *M.*, and also subscribe the whole accounts of *London* and *Middlesex*, and the duplicate thereof, to the end that one part thereof, which shall be the charge remaining with our sovereign lord the king, and the lord treasurer, and commissioners of the Treasury, and the remembrancer of the Exchequer, may be answered with the other part and duplicate thereof, subscribed by some of the officers of the Exchequer for the said sheriff; all which shall be solicited and followed to be got, and shall be got, finished and effectually perfected, by the said *J. R.* and *C. B.* or one of them, at their or one of their own proper costs and charges, for so much thereof as shall concern the said county of *M.* and in all offices and places through which the same ought duly to pass; and that the same shall be performed and done with due speed, and without delay and unnecessary intermission, and shall be done and brought to the Pipe-office in that due time and manner which the statute hath ordained concerning sheriffs accounts, as by the statute

and statutes in that behalf is limited and appointed; and likewise be dispatched from the Pipe-office with convenient expedition; and on and before the day of which shall be in the year of our Lord 18 procure sufficient discharge, and formal *quietus est*, in due form of law, at the proper costs and charges of the said *J. R.* and *C. B.* or one of them, for so much of the said account as shall concern the said *C. A.* and *R. G.* as sheriff of the county of *M.* as aforesaid, their heirs, executors or administrators, and every of them; so that their and each of their lands, tenements, goods and chattels and estates may at all times thereafter stand free and clear from all damages, charges and accounts for or by reason of the said office or place of sheriff of the said county of *M.*: *And further*, that the said *J. R.* and *C. B.* or one of them, at their or one of their own proper costs and charges, shall defray, bear, pay and lay out all such charges, of what nature soever, as have been heretofore laid out by any under-sheriff of the said county of *M.* at the sessions held at the *Old Bailey*, within the city of *London*; and shall also, at their or one of their proper costs and charges, defray, bear and lay forth all charges whatsoever which are or shall be expended at the several sessions held in the said county of *M.* at any time or times during the said time or term, for which the said *C. A.* and *R. G.* or either of them, shall continue to be sheriff of the said county of *M.*; *and* shall and will freely discharge and save harmless the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors or administrators, of and from the same: *And further*, that the said *J. R.* and *C. B.* or one of them, shall at their or one of their own proper costs and charges, defray, bear, pay and lay forth all charges and other expenses whatsoever that are or ought to be laid forth or disbursed in for or about the executing or punishing all and every traitors and felons, and all other persons whatsoever that are or shall be condemned or attainted for treason or felony, or persons adjudged to be whipt, set upon the pillory, or otherwise punished according to law, whatsoever or howsoever, in the said county of *M.*; and of such prisoners as shall be from time to time convicted and attainted shall and will make, or cause to be made, due execution according to the judgment or sentence against every of them to be pronounced, at any time or times during the said term or terms: *And also*, that the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, bailiff or bailiffs, or any other officer or officers that shall be employed, retained, admitted, appointed or permitted, by or under the said *J. R.* and *C. B.* or either of them, at any time or times during the said term

or terms, shall not, without the special consent of the said *C. A.* and *R. G.* in that behalf in writing obtained, under their hands, detain or keep, above the space of forty-eight hours, in their or any of their custody, house, room or chamber, or in any other house, room, chamber or place whatsoever, any prisoner or prisoners by him or them or any of them arrested, or to be arrested or taken within the said county of *M.* for any debt, damages, fine, suit or cause, for above the value of 20*l.* of lawful money of *Great Britain*, or for several or any cause or causes together exceeding the said sum of 20*l.*, but the same prisoners, and every of them, so arrested and taken for above the said sum of 20*l.* shall forthwith and without delay commit, or cause to be committed, to the gaol or prison of *Newgate*, or one other common gaol or prison appointed or to be appointed for such purpose for the said county of *M.*, there to remain until such prisoner or prisoners shall be discharged by due course of law, or shall otherwise be let to bail, all and every such prisoner and prisoners, upon good and sufficient securities and bail, according to the form of the statute in that case made, if so be the law shall require and warrant the said sheriff, or the under-sheriff of the said county of *M.* to let to bail such prisoner or prisoners, and not otherwise; and that he the said *J. R.* with the concurrence and assistance of the said *C. B.* as aforesaid, shall and will well, truly and faithfully, providently, circumspectly and diligently, do, perform, execute and accomplish all and singular acts, matters and things which to the said office of sheriff or under-sheriff of the said county of *M.*, during the said term and time that they the said *C. A.* and *R. G.* shall continue in the said office, do or shall appertain and belong, or ought to be by the said sheriff or under-sheriff performed and accomplished: *And also*, that the said *J. R.* and *C. B.* and all and every the bailiffs, clerks, servants and ministers, that shall be employed by or under them, or either of them, in the execution of the said office, to the utmost of his and their and every of their power, and as much as in them, or any of them, is or shall be, all and singular the liberties and franchises to the said mayor, commonalty and citizens of the city of *London*, and to the said *C. A.* and *R. G.* as sheriffs of *London*, or sheriff of the county of *M.* belonging and appertaining, shall and will well and truly observe, perform, maintain and keep, in all places within the said county of *M.*, and shall not, so far as in the power of the said *J. R.* and *C. B.* or either of them, shall lie, permit or suffer the said liberties and franchises, or any of them, to be broken, infringed or violated in anywise: *And further*, that they the said *J. R.* and *C. B.* or one of them, shall and will duly and justly perform, execute and keep, all

such articles and matters whatsoever as are contained, mentioned and expressed in the condition of the bond or recognizance which the said *C. A.* and *R. G.* or either of them, with sureties, have or hath or shall enter into and acknowledge, to the use of our sovereign lord the king, in His Majesty's court of Exchequer, concerning the said office of sheriff of *M.*, save only such as do necessarily require the personal attendance of the said *C. A.* and *R. G.* or either of them : *And* the said *C. A.* and *R. G.* *Do* covenant, and promise and grant, by these presents, for themselves and each of them severally, and for their and each of their several heirs, executors and administrators, to and with the said *J. R.* and *C. B.* their executors and administrators, that all and every the covenants and covenant, obligations taken or to be taken, in the names of the said *C. A.* and *R. G.* as sheriff of the said county of *M.* either of or from the several bailiffs in their places, or of or from any person or persons arrested or to be arrested within the county of *M.* within the time that they or either of them shall continue in the said office, by virtue of any writ, precept or mandate whatsoever, so nevertheless as the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, shall be secured, kept harmless and indemnified by the said *J. R.* and *C. B.* their heirs, executors and administrators, for, touching or concerning the said office of sheriff, shall be at the only use of the said *J. R.* and *C. B.* their executors and administrators, for their better security, and being saved harmless of and from any damages, losses, troubles and expenses that shall or may grow, come or happen to them by reason of the misdemeanors or negligences of any of the said bailiffs, or any other person or persons arrested or to be arrested, or for or by reason of his or their non-appearances, or otherwise howsoever : *And* that they the said *J. R.* and *C. B.* their executors and administrators, performing the covenants herein contained on their parts to be performed, shall and may, at their own proper costs and charges, sue the said covenants and obligations in the name of the said *C. A.* and *R. G.* or the survivor of them, or the executors or administrators of such survivor, by virtue of these presents, and receive, take and enjoy to the proper use and behoof of the said *J. R.* and *C. B.* their executors, administrators and assigns, all such lawful benefits and recompenses as shall arise or come upon or by reason of the said covenants, obligations and suits, and every or any of them, in any manner or wise as they the said *C. A.* and *R. G.* or either of them, their or either their executors or administrators might lawfully and equitably have done, if these presents had not been made : *Provided nevertheless*, and so that the said *J. R.* and *C. B.* their executors,

administrators and assigns, do always indemnify and save harmless the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, and their and each of their goods, chattels, lands, tenements and estates, of and from all and all manner of costs, charges, damages and sums of money whatsoever, which may in anywise be awarded, adjudged, ordered, decreed or recovered against the said *C. A.* and *R. G.* or either of them, their or either of their heirs, executors or administrators, by reason, means or occasion of the putting in suit as aforesaid any of the aforesaid covenants or obligations by the said under-sheriff, his executors, administrators or assigns, in the name or names of the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators, which they the said *J. R.* and *C. B.* do, and each of them doth hereby, for himself severally, and for his respective executors and administrators, covenant to do; *And also*, that it shall and may be lawful to and for the said *J. R.* with such concurrence of the said *C. B.* as aforesaid, they observing and performing the said covenants and agreements herein contained on their parts to be performed, to have and enjoy the said office of under-sheriff of the said county of *M.* subject to the proviso hereinafter mentioned, and to keep all and singular courts, tourns, leets, and county-courts, for the said time, at the times and places duly appointed for the same, according to the laws and statutes of this realm, and the customs and usages of the county of *M.*; and that in such cases as aforesaid, they the said *C. A.* and *R. G.* as far as they lawfully may without any breach or infringement of their duty as sheriff of the said county of *M.*, do covenant, promise and grant, that the said *J. R.* and *C. B.* shall and may have and take all lawful fees, dues, profits and commodities that shall or may be lawfully had, gotten, received or become due to the said sheriff by virtue or means of the said office of sheriff of the said county of *M.* to the proper use of them the said *J. R.* and *C. B.* without the contradiction or denial of the said *C. A.* and *R. G.* or either of them, to be given; and also that he the said *J. R.* shall and may have, receive and take to and for the proper use of the said *J. R.* and *C. B.* (in case the said *J. R.* shall be continued in the said office of under-sheriff of the said county of *M.* during the sheriffalty of the said *C. A.* and *R. G.*, and shall duly pass the accounts of the said *C. A.* and *R. G.* as sheriff of the said county, and procure a good and sufficient discharge to them in respect thereof, according to the intent of the covenants hereinbefore in that behalf contained), the sum of 119*l.* 3*s.* being the allowance for passing the accounts of the sheriff of the county of *M.* made or given to the sheriff of the said county of *M.* for the time

being, by an act of parliament made in the third year of the reign of his late majesty king *George* the first, intituled, *An Act for the better enabling the sheriffs to sue out their patents and pass their accounts*; And the said *C. A.* and *R. G.* do hereby nominate, constitute, and appoint the said *J. R.* their lawful attorney, for them and in their names, but to the use aforesaid, to receive from the receipt of His Majesty's Exchequer, or from such person or persons as shall be appointed to pay the same, the said sum of 119*l.* 3*s.*, and on receipt thereof, to make, execute, and give for them and in their names, a full and sufficient receipt and discharge for the same; they the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, and their and each of their goods, chattels, lands and tenements, being saved harmless and indemnified from time to time by the said *J. R.* and *C. B.* according to the true intent and meaning of these presents: *And whereas* it is intended by these presents, that the said *J. R.* and *C. B.* shall receive and account for, in the names of the said *C. A.* and *R. G.* as sheriff of *M.*, such of His Majesty's revenue arising within the said county of *M.*, and during the continuance of him the said *J. R.* in the said office of under-sheriff, as usually hath been received by other under-sheriffs: *And also*, that the said *J. R.* and *C. B.* shall, and they do hereby accordingly agree, to lay out and disburse for His Majesty's service, such monies as heretofore have usually been paid, laid out and disbursed by former under-sheriffs of the said county, whereby the balance of accounts between our lord the king, and the said *C. A.* and *R. G.* (if any should be due from our said lord the king, to the said *C. A.* and *R. G.* as sheriff of the said county) will of right belong to them the said *J. R.* and *C. B.*; wherefore, to enable him the said *J. R.* to receive the balance of the said account, if any shall appear to be due to the said *C. A.* and *R. G.* as sheriff of the said county, they the said *C. A.* and *R. G.* do hereby nominate, constitute and appoint him the said *J. R.* their lawful attorney for them the said *C. A.* and *R. G.* and in their names, but to the uses aforesaid, to receive at the receipt of His Majesty's Exchequer, from such person or persons who shall be appointed to pay the same, such surplus or balance of the said account, (if such shall be due,) and on receipt thereof to make, execute and give, in the names of them the said *C. A.* and *R. G.*, a full and sufficient discharge for the same. *Provided nevertheless*, and it is hereby declared and agreed by and between all the parties to these presents, and particularly by the said *J. R.* and *C. B.* for themselves, their heirs, executors and administrators, that they the said *J. R.* and *C. B.* for themselves, their heirs, excutors and administrators, shall and

will well and truly account for, pay and deliver to the said *C. A.* and *R. G.* or one of them, their or one of their executors or administrators, all such sum and sums of money, fees, dues, perquisites, profits and emoluments whatsoever, which have been heretofore usually had and received by former sheriffs of the said county of *M.* and not by the under sheriff for the time being, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said *J. R.* and *C. B.* for themselves jointly and severally, and for their respective heirs, executors and administrators, do, and each of them doth, hereby covenant, promise, grant and agree, to and with the said *C. A.* and *R. G.* their executors and administrators, that they the said *J. R.* and *C. B.* their executors and administrators, shall and will, from time to time, and at all times from henceforth, save, keep harmless and indemnified them the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action and actions, suits, troubles, fines, amerciaments, pains, penalties, forfeitures, defaults, and all damages, matters and things whatsoever relating to the said office of sheriff of *M.*, excepting only what shall happen by the personal default, negligence and omission of them the said *C. A.* and *R. G.* or either of them, or their or either of their proper acts. *Provided nevertheless*, that it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times during their continuing the said *J. R.* in the said office of under-sheriff, at their or either of their wills and pleasures, to command the said *J. R.* and *C. B.* or either of them, or his or their deputy or deputies, clerk or clerks, to attend them the said *C. A.* and *R. G.* or either of them, with the freeholders books, wherein the freeholders names of the county of *M.* are or shall be inserted and entered, and that the said *C. A.* and *R. G.* or either of them, at their wills and pleasures, shall from time to time nominate and return such juror and jurors, inquest and inquests, to be returned and impannelled as jurors, to inquire and serve in His Majesty's courts at *Westminster*, or before any of His Majesty's court or courts, commissioner or commissioners of *oyer and terminer*, gaol delivery, commission of the peace, justice or justices of the peace, and all and every other person and persons having lawful authority to command the said *C. A.* and *R. G.* as sheriff of the said county, to cause to come before them, or any of them, any juror or jurors, inquest or inquests whatsoever, to serve for or in the said county, or upon any issue whatsoever arising to be tried, or any inquisition to be taken within the said county of *M.* And the said *J. R.* and *C. B.*, for themselves, their heirs, executors and administra-

tors, *do*, and each of them *doth*, covenant and promise to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, by these presents, that they the said *J. R.* and *C. B.* or one of them, shall and will from time to time, ingross, impanel and return, or cause to be ingrossed, impanelled and returned, and summoned, such juror or jurors, inquest and inquests, so from time to time nominated and appointed to be returned by the said *C. A.* and *R. G.* or either of them, with their names subscribed to such returns, and none other, together with the like process to them directed in that behalf, and shall and will always, on notice, attend with the said freeholders book on them the said *C. A.* and *R. G.* or either of them, and permit them to nominate and return such juror and jurors, inquest and inquests, in manner aforesaid : any thing in these presents contained to the contrary thereof notwithstanding. *And further*, that they the said *J. R.* and *C. B.* or either of them, their or either of their deputies, clerks or servants, shall not at any time or times, during the said time or term which the said *C. A.* and *R. G.* or either of them, shall continue to be sheriff of the said county of *M.*, ingross, return, impanel, or cause to be ingrossed, returned or impanelled, any inquest or jury, for the trying any traitor or traitors, without the approbation of the said *C. A.* and *R. G.* first had and obtained ; *nor* open, execute or return any letters of commandments from the king's Majesty, the Privy Council or the Secretaries of State, directed to the sheriff of *M.*, without first giving notice to the said *C. A.* and *R. G.* and taking their directions therein, in case they or either of them, at the time of the receipt or delivery of any of the said letters or commandments, shall be resident in the city of *London*, and county of *M.* or either of them. *Provided further*, that it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times during their continuing the said *J. R.* in the said office of under-sheriff, at their wills and pleasures to prohibit and forbid the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, by a note in writing under their hands, from opening, sending, executing or returning any writ or writs, precept or mandate, that shall be directed to the sheriff of *M.* for the electing any member or members to serve in parliament in or for the said county of *M.*, to the end the said *C. B.* and *R. G.* or one of them, may personally and duly open, send, execute and return the same ; *And* in such case the said *J. R.* and *C. B.*, for themselves severally, and for their several heirs, executors and administrators, *do*, and each of them *doth*, hereby covenant and promise to and with the said *C. A.* and *R. G.* and each of them, their and

each of their executors and administrators, that they the said *J. R.* and *C. B.* will not open, send, execute or return any such writ or writs, precept or mandate, without the special directions of the said *C. A.* and *R. G.* or one of them, first had and obtained in writing, whereby to hinder or prevent the said *C. A.* and *R. G.* from opening, sending, returning or executing any such writ or writs in their proper persons: *Provided always*, and it is the true intent, meaning and agreement of all the said parties to these presents, that if the said *J. R.* and *C. B.* or either of them, shall not well, honestly and carefully demean and behave themselves in the said office of under-sheriff of the said county of *M.* in all business, matters and things thereunto belonging, to the good liking and approbation of the said *C. A.* and *R. G.*, that then and from thenceforth it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times during their or either of their continuance in the said office of sheriff of the said county of *M.*, to displace and remove the said *J. R.* and *C. B.* or either of them, so misbehaving, out of and from the said place and office of under-sheriff aforesaid, for and during the then residue of the said term of the said time and term hereby granted; any thing in this present indenture contained, or any other matter whatsoever to the contrary thereof in anywise notwithstanding. *And* the said *J. R.* and *C. B.* for themselves severally, and for their several heirs, executors and administrators, and every of them, *do*, and each of them *doth*, covenant, promise and agree, to and with the said *C. A.* and *R. G.* their executors and administrators, by these presents, that in case of such displacing of the said *J. R.* and *C. B.* or either of them as aforesaid, they the said *J. R.* and *C. B.* or either of them, their or either of their executors and administrators, after his or their being so displaced, shall not nor will act as under-sheriff of the said county, in anywise howsoever during the shrievalty of the said *C. A.* and *R. G.* in the case of such removal as aforesaid, they the said *J. R.* and *C. B.* or one of them, shall and will deliver unto the said *C. A.* and *R. G.* or one of them, their or one of their executors or administrators, all and all manner of books belonging or relating to the said office, and all bail-bonds, process and mandates, and other things whatsoever relating to the said office which shall then be depending and remaining, or be in the hands, custody or disposal of the said *J. R.* and *C. B.* or either of them, their or either of their clerks, bailiffs or servants, unexecuted or not returned, whole, safe and uncanceled, and shall and will also pay and deliver to them the said *C. A.* and *R. G.* or one of them, all sum and sums of money, goods and chattels, as shall be taken, paid or levied in exe-

emoluments to the said sheriff incident or belonging. *And* the said *A. B.*, *C. D.*, *E. F.*, and *G. H.* for and in consideration of the premises, for themselves severally, their and every of their heirs, executors and administrators, by these presents, covenant, promise and agree to and with the said

his executors and administrators, in manner and form following, *that is to say*, *That* he the said *A. B.* from time to time, and at all times during the said shrievalty, shall, in and by all things in his said place or office, well, truly, lawfully and honestly bear and behave himself, and faithfully and diligently serve and attend the said sheriff, and his under-sheriff of the said county, and every of the deputies of them the said sheriff or under-sheriff in the said office, and in due and lawful manner, all their and every of their lawful commands or directions, touching any manner of service incident or belonging to the said sheriff of the said county, or to any bailiff of the said county, willingly, readily, lawfully and dutifully shall do, execute and perform:—*That* the said *A. B.* shall at all time or times hereafter, during the said shrievalty, lawfully execute and serve all and all manner of briefs, warrants, precepts or mandates, directed or to be directed to him, by or in the name of the said sheriff, or by or in the name of any officer or person in that behalf lawfully authorized, which shall be tendered or come to the hands of the said *A. B.* to be executed or served; and shall and will make true, direct and lawful return and returns, and answer in writing, subscribed with his own hand, of, to or upon every such brief, warrant, precept or mandate, and shall deliver the same, together with such returns, to the said sheriff or under-sheriff, at the public office of the said sheriff, on or before the days or times of the return or returns of such brief, warrant, precept or mandate, without any manner of fraud or delay, whether the same shall be demanded or not:—*That* the said *A. B.* during the said shrievalty, shall receive and take into his custody, alone, or jointly with any other bailiff or bailiffs of the said county, the body and bodies of such prisoner and prisoners, which the said sheriff, under-sheriff, or any of his or their deputy or deputies, shall by warrant upon any writ of *habeas corpus* tender, and require the said *A. B.* to receive and take into his safe custody, and shall, by virtue of such warrant and writ of *habeas corpus*, safely conduct and carry such prisoner or prisoners to be delivered, before such court or courts, judge or judges, or to such sheriff or sheriffs, gaoler or gaolers, as the said writ of *habeas corpus*, and warrant to him directed thereon shall appoint, and shall safely conduct and deliver such prisoner and prisoners before such court or judge, or into the safe custody of such sheriff or sheriffs, gaoler or gaolers, as the said writ

or writs shall direct, and take the receipt of such sheriff or sheriffs, gaoler or gaolers, indorsed upon such writ or writs of *habeas corpus*, for saving harmless the said sheriff and under-sheriff in that behalf:—*That* in case any such prisoner or prisoners shall be remanded, then he the said *A. B.* shall forthwith safely convey and remit every such prisoner to the custody of the keeper of the gaol of _____ or to the keeper or keepers of any other gaol or place of security appointed by law to receive prisoners from the said sheriff, arrested or taken in execution on any civil process :—*That* the said *A. B.* hath not heretofore suffered to go at large or to escape, nor shall hereafter at any time or times, for and during the time that the said _____ shall continue sheriff of the said county, set at liberty, or suffer to go at large, or to escape, any person or persons whatsoever heretofore arrested or taken, or which shall hereafter be arrested or taken by the said *A. B.* alone, or together with or by any other bailiff or officer, by his, their or any of their body or bodies, by virtue of any writ, warrant, precept or mandate whatsoever of the said sheriff, or which now are, or hereafter shall be in, or committed to, the charge or custody of him the said *A. B.* alone, or together with or by any other bailiff or officer, as prisoner or prisoners of or to the said sheriff, for any cause or causes whatsoever, without a lawful and sufficient warrant, for the discharging of such prisoner or prisoners :—*That* the said *A. B.* shall not at any time hereafter deliver, or suffer any goods or chattels to be taken out of his possession, which shall be seized or taken in execution by him alone, or together with any other bailiff or officer of the said sheriff, or which shall be delivered or left in the hands or custody of him the said *A. B.* by the said sheriff or under-sheriff, their deputies or clerks, without a lawful and sufficient warrant for the delivery of the same, but shall make or cause to be made, a just, true, and perfect inventory of all such goods by him so seized, which shall come to his hands, within the space of twenty-four hours after the same shall be seized or come to his hands as aforesaid, and shall cause the same to be appraised by two appraisers, one of them to be appointed by the said sheriff, and shall, so soon as conveniently may be after such appraisement made, deliver a copy thereof, signed by the said *A. B.* to the said under-sheriff, his deputy or clerk, or one of them, at the public office of the said sheriff; and likewise shall and will, when and so often as any goods or chattels by him so seized or taken are sold, (if the money for which such goods shall be sold shall come to the hands, custody or possession of the said *A. B.*,) forthwith pay or cause to be paid to the said under-sheriff, his deputy or clerk, or some or one of them, all such sum and sums of money for which the same

shall be sold :—*That* the said *A. B.* shall not remove any goods or chattels which at any time or times, during the continuance of the said shrievalty, he may seize or take in execution, within the said county, from the place where such goods and chattels shall be so seized or taken in execution, before the rent (if any due) shall be paid to the landlord or landlords of the premises whereon any such goods or chattels shall have been seized or taken in execution pursuant to the statute in that case made and provided :—*That* the said bailiff from time to time, and at all times during the said shrievalty, shall truly and diligently levy, collect and gather all and every the several sum and sums of money wherewith the said sheriff shall stand charged or chargeable in His Majesty's court of Exchequer at *Westminster*, or any other court whatsoever, to be levied, collected and gathered, within the said county, and for levying whereof the said bailiff shall have a sufficient warrant delivered or tendered to him :—*That* the said bailiff shall well and truly satisfy and pay all and every the same sum and sums of money to the said sheriff, or to the said under-sheriff, their or one of their executors or administrators, at or before the return of such warrant, which for levying the same shall be delivered or tendered to the said bailiff as aforesaid, so as the said sheriff may make payment of the said money into the said court of Exchequer in due time, and may pass his perfect account at the time limited by the said court ; and that the said bailiff shall, upon request, subscribe his name, testifying the receipt of every such warrant :—*That* the said bailiff shall, during the shrievalty, seize and take into his hands and custody all goods and chattels of felons, fugitives and persons outlawed or waived, or goods or chattels waived or strayed, which shall happen to be found, had or taken within the said county ; and thereof, and of all other sums of money, fees and profits, in anywise due, belonging or incident to the said sheriff or under-sheriff, which shall at any time happen to come to the hands or custody of the said *A. B.* by reason of executing the said place or office of one of the bailiffs of the said sheriff, shall make a and true account, and payment or delivery, to the said sheriff or under-sheriff, when and so often as the said *A. B.* shall be thereunto required :—*That* the said bailiff, during the said shrievalty, shall diligently and carefully, in his own person, in due manner, attend at all and every general and quarter session or sessions of the peace at sessions of oyer and terminer, and gaol delivery, to be holden for the said county, at or at any place or places within the said county, or elsewhere, and during the continuance of every such session and sessions, and of every adjournment or adjournments thereof, and there do, perform and accomplish

all such things as to the said office of bailiff shall appertain :—*That* the said bailiff during the said shrievalty, so often as he shall arrest, or take in execution any person or persons by virtue of any warrant whatever, before the person or persons so arrested or taken, be carried to any public or other house, or before any liquor or meat shall be called for, he the said bailiff shall show and deliver to the person or persons so arrested, or taken in execution, copies of the following clauses, part of an act of parliament passed in the 22d year of the reign of his late Majesty king *George* the second, intituled, “ An act for the relief of debtors with respect to “ the imprisonment of their persons, and to oblige debtors “ who shall continue in execution beyond a certain time, “ and for sums not exceeding what are mentioned in the act, “ to make discovery of, and deliver upon oath their estates, “ for their creditors’ benefit ;” and also that the said *A. B.* shall suffer the person so arrested, or any friend of his, to read the same ; which said clauses follow in these words : “ *BE IT THEREFORE ENACTED* by the king’s most excellent “ majesty, by and with the advice and consent of the lords “ spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that “ no sheriff, under-sheriff, bailiff, serjeant at mace, or other “ officer or minister whatsoever, shall at any time or times “ hereafter, convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or “ being in his or their custody by virtue or colour of any “ action, writ, process or attachment, to any tavern, alehouse, “ or other public, victualling or drinking-house, or to the private house of any such officer or minister, or of any tenant or “ relation of his, without the free and voluntary consent of “ the person or persons so arrested or in custody ; nor “ charge any such person or persons with any sum of money “ for any wine, beer, ale, victuals, tabacco, or any other “ liquor or things whatsoever, save what he, she or they shall “ call for, of his, her or their own free accord ; nor shall cause “ or procure him, her or them, to call or pay for any such “ liquor or things, except what he, she or they shall particularly and freely ask for ; nor shall demand, take or receive, “ or cause to be demanded, taken or received, directly or “ indirectly, any other or greater sum or sums of money “ than is or shall be by law allowed to be taken or demanded, for any arrest or taking, or for detaining or waiting till the person or persons so arrested or in custody “ shall have given an appearance or bail, as the case shall “ require, or agreed with the person or persons at whose “ suit or prosecution he, she or they shall be taken or arrested, “ until he, she or they shall be sent to the proper gaol be-

“ longing to the county, riding, division, city, town or place
 “ where such arrest or taking shall be ; nor shall exact or
 “ take any reward, gratuity or money for keeping the per-
 “ son or persons so arrested, or in custody, out of gaol or
 “ prison ; nor shall carry any such person or persons to any
 “ gaol or prison, within four-and-twenty hours from the
 “ time of such arrest, unless such person or persons so
 “ arrested shall refuse to be carried to some safe and con-
 “ venient dwelling-house, of his, her or their own nomination
 “ or appointment, within a city, borough, corporation or
 “ market-town, in case such person or persons shall be
 “ there arrested, or within three miles from the place where
 “ such arrest shall be made, if the same shall be made
 “ out of any city, borough, corporation or market-town, so
 “ as such dwelling-house be not the house of the person
 “ arrested, and be within the county, riding, division or liberty
 “ in which the person under arrest was arrested ; and then
 “ and in such case it shall and may be lawful to and for such
 “ sheriff, or other officer or minister, to convey or carry the
 “ person or persons so arrested, and refusing to be carried to
 “ such safe and convenient dwelling-house as aforesaid, to
 “ such gaol or prison as he, she or they may be sent to, by
 “ virtue of the action, writ or process against him, her or
 “ them. *And be it further enacted*, by the authority afore-
 “ said, that no sheriff, under-sheriff, bailiff, serjeant at mace,
 “ or other officer or person shall, at any time or times here-
 “ after, take or receive any other or greater sum or sums, for
 “ one or more night’s lodging, or for a day’s diet, or other
 “ expenses of any person or persons under arrest, or any
 “ writ, action, attachment or process, other than what shall
 “ be allowed, as reasonable in such cases, by some order or
 “ orders already made, or which shall hereafter be made, by
 “ the justices of the peace at some general or quarter sessions
 “ which shall be held for the county, riding, division, city,
 “ town or place where such arrest or taking shall be, who are
 “ hereby authorized and required, with all convenient expe-
 “ dition, to make such standing order or orders for ascer-
 “ taining such charges and expenses, within their respective
 “ counties, ridings, divisions, cities, towns and jurisdictions,
 “ if the same hath or have not already been there made, and
 “ if any such order or orders hath or have been there already
 “ made, such justices for the time being, at their respective
 “ general or quarter sessions, are hereby authorized and re-
 “ quired to vary or alter the same from time to time as there
 “ shall be occasion ; and also are hereby required to cause
 “ a copy of every such order, and of every variation or alter-
 “ ation thereof, signed by the clerk of the peace of every such
 “ county, riding, division, city, town or place respectively, to

“ be put and kept up in some conspicuous place in the sessions-house, or some other proper place, of every such respective county, riding, division, city, town or place, as such justices shall order, so as the same may be there seen and examined, as occasion may require.” That the said *A. B.* during the said shrievalty, shall, immediately after any arrest by him made, by virtue of a warrant to him directed, by or in the name of the said sheriff, give notice of the same to the said under-sheriff, or to one of his clerks or deputies, at the public office of the said sheriff, and duly enter the name of the person or persons by him so arrested, or taken in execution, and shall safely deliver into the prison, in the charge or custody of the gaoler, or keeper of the gaol of

or to the keeper or keepers of any gaol or place of security, appointed by law to receive prisoners from the said sheriff, arrested or taken in execution, by any civil process, within the space of twenty-four hours next after such arrest or taking, (except in the mean time he, she or they shall be lawfully discharged,) there to be safely kept until they shall be from thence duly discharged. And if it shall so happen that the said *A. B.* shall keep or detain any person or persons by him so taken in execution, in his own house, or elsewhere, and shall not deliver him, her or them into the gaol of

or to the keeper or keepers of any other gaol or place of security as aforesaid, within twenty-four hours next after such arrest or taking, that then, and in every such case, he the said bailiff shall well and truly pay, or cause to be paid, to the said sheriff, or under-sheriff, the sum of ten pounds of lawful money of *Great Britain*, for every hour that he the said *A. B.* shall keep or detain in his custody, out of the said gaol of or other place of security, any person or persons by him so arrested or taken, beyond and above the before limited time of twenty-four hours, except the said bailiff shall have license in writing under the hand and seal of the said sheriff or under sheriff, for the keeping and detaining in his custody any such prisoner or prisoners for a longer time:—*That* if any return or returns shall at any time or times be made, at the particular instance or desire of the said *A. B.* by or in the name of the said sheriff, to any writs, bills or precepts, which shall or may at any time be declared or adjudged insufficient by any of His Majesty's courts at *Westminster*, then, and in every such case, the said bailiff shall and will bear, satisfy and pay to the said sheriff or under-sheriff, all loss, costs, charges, damages, expenses and amerciaments, which the said sheriff or under sheriff shall in any manner suffer, sustain, pay or be put unto, for or by reason of the making any such insufficient return or returns:—*That* if any writ or writs of attachment of contempt hath or

have issued, or shall hereafter be sued out and prosecuted against the said sheriff, for or by reason of the not bringing into court the body or bodies of any person or persons arrested or taken by the said *A. B.* of or for whom he hath or shall take any bail-bond to the said sheriff, or of or for whom the said bailiff ought to have taken any such bond, then, and in every such case, the said *A. B. &c.* shall and will well and faithfully bear, pay and discharge, to the said sheriff, or to the said under sheriff, all losses, costs, charges, damages and expenses, which they or any of them shall or may suffer, sustain, pay or be put unto, for or by reason of any such writ or writs of attachment, or for or by reason of any person or persons, forbearing to execute or further prosecute the same:—*That* if any copy or copies of any warrant or warrants shall be delivered, sent or certified to the said *A. B.* from the said sheriff, under-sheriff, deputy or clerk, as a copy or copies of any other warrant or warrants, or detainer or detainers, against any person or persons arrested or taken by the said bailiff, or delivered to him, or left at his house or place of abode, for safe custody, by any other bailiff or bailiffs of the said sheriff, then, and in every such case, the said *A. B.* shall and will, if such copy or copies shall happen to be against the person or persons arrested, or then in his custody as bailiff aforesaid, safely keep him, her or them, by virtue of such detainer or detainers, until he, she or they, shall be discharged by due course of law; and upon everyailable writ or process, which shall appear from any such copy or copies, the said *A. B.* shall and will take a good and sufficient bail-bond, if the same shall be tendered:—*That* the said *A. B.* shall and will, whenever he shall receive any copy or copies as aforesaid, give notice to the bailiff or bailiffs, who shall have the custody of the original warrant or warrants, or to whom the same is or shall be directed, to the intent that every such original warrant may be immediately returned to the said under sheriff, deputy or clerk, at the public office of the said sheriff:—*That* if any copy or copies of any warrant or warrants, which shall or may be sent, delivered or certified to the said *A. B.* as aforesaid, shall not happen to be against the person or persons by him arrested, or then in his custody, the said *A. B.* shall immediately return every such copy, and give notice in writing thereof to the said under-sheriff, deputies or clerks, at the public office of the said sheriff:—*Provided always*, that the said bailiff shall, immediately on the receipt of any warrant to him directed from the said sheriff, under-sheriff, or any other person or persons by them or either of them duly authorized and signed by or in the name of the said sheriff, to discharge any prisoner or prisoners, or quit possession of any goods or chattels seized as aforesaid, discharge

any such prisoner or prisoners, and quit possession of such goods and chattels:—*That* the said *A. B.* shall not, during the said shrievalty, seize or take in execution the goods of, or attach, or arrest the body of any ambassador or foreign minister, or the servant of any ambassador or foreign minister, or of any other person whatsoever, privileged or protected, without license in that behalf first had and obtained, under the hand-writing of such person or persons, who for the time being have good authority to grant license in that behalf:—*That* the said *A. B.* shall and will take good and sufficient bail-bonds, or bonds of appearance, (if the same shall be tendered) of all persons by him arrested or taken on bailable process, whereon he shall execute or serve any warrant or warrants to him directed, by or in the name of the said sheriff, according to the form of the statute in such case made and provided; and that the said bailiff, before he shall let to bail any person so arrested or taken, shall procure a certificate in writing, under the hand of the said under-sheriff, his deputy or clerk, purporting that there is not any other writ or process then in the sheriff's office against the person so arrested or taken:—*That* the said *A. B.* shall and will deliver unto the said under sheriff, deputies or clerks, all bonds bailable, or otherwise, which he shall take to the said sheriff, within two days after the same shall be taken; and if the said *A. B.* shall neglect or refuse so to do, then, for every such refusal or omission, he shall and will forfeit and pay to the said under sheriff, deputies or clerks, ten shillings of like lawful money:—*That* the said *A. B.* during the said shrievalty shall execute to the said sheriff a sufficient bail-bond to all writs, processes and precepts which shall be delivered to the sheriff against him; and shall appear thereto, and put in such bail as the same shall require, or render his body to the said sheriff, to the intent that he may be duly committed; and further shall do and perform all such things as the law in that behalf shall require: *And* also shall satisfy and pay unto the said sheriff, or to the said under-sheriff, all such sum and sums of money for which any writ of execution shall be delivered to the said sheriff, against him the said *A. B.* or otherwise shall render himself a prisoner to the aforesaid sheriff thereupon:—*That* the said bailiff shall pay to the said sheriff, or under sheriff, all losses, or any sum or sums of money which they or either of them shall suffer or pay for or by reason or means of any writ or process delivered to the said sheriff against him:—*That* if any debt, damage, sum or sums of money whatsoever, shall at any time or times hereafter be recovered, adjudged or decreed against the said sheriff for the escape or suffering to go at large any prisoner or prisoners whatsoever, or for taking insufficient bail of prisoners, bailable by law, or refusing or

neglecting to take sufficient bail, or for taking bail of such prisoners as by law are not bailable, or by mistake in levying one person's goods for another, or for any other cause, where it shall appear that such escape or suffering to go at large, taking such goods, or other cause, was or were occasioned, made, done, committed or suffered by the default, negligence, permission or occasion of the said *A. B.* or any of his servants, or others by him entrusted or employed:—*That* in every such case, the said *A. B.*, *C. D.*, *E. F.*, &c. or some of them, their or some of their executors or administrators, shall well and truly satisfy and pay unto every such person or persons, who shall so recover against the said sheriff, or unto whom any thing shall be recovered, adjudged, ordered or decreed, all and every the same debts, damages, sum and sums of money, goods or things so recovered, adjudged, ordered or decreed, without any further suit or delay, and shall thereof clearly exonerate, acquit and discharge the said sheriff, and shall likewise satisfy and pay unto the said sheriff, or to the said under-sheriff, all such sum and sums of money as the said sheriff, or under-sheriff, or any of them, shall have disbursed or expended in defending any such suit, over and above the usual costs, in any court or courts, against the said sheriff in that behalf adjudged:—*That* the said bailiff, on the day of now next coming, shall deliver to the said sheriff, under-sheriff, deputies or clerks at the public office of the said sheriff, all warrants which may be hereafter granted by or in the name of the said sheriff, on any writ or process returnable in the then next term, which shall remain in his hands not executed, to the end that the said sheriff may turn over to the succeeding sheriff, by indenture, all such writs and process as shall remain in his hands unexecuted, pursuant to the statute in that case made and provided: *Provided nevertheless*, and it is covenanted, concluded and agreed upon, by and between the said parties to these presents, that when and so often as the said bailiff shall make breach of any of the covenants, articles and agreements, which, by or on the behalf of him, are or ought to be observed, performed, fulfilled and kept, that then and from thenceforth it shall and may be lawful for the said sheriff, or the said under sheriff, deputies or clerks, to remove and put out the said bailiff, from his said office or employment:—*And* in case of such removal, that he shall deliver, or cause to be delivered unto the said sheriff, under-sheriff, deputies or clerks, all such warrant or warrants, precept or precepts, bond or bonds, writing or writings whatsoever, which may or shall in anywise appertain or belong to the said sheriff; and also shall pay to the said sheriff, or under-sheriff, all and every sum and sums of money by him levied, received or collected, by virtue of any such warrant, precept or mandate

of the city of *London*, alderman and goldsmith,
 and of the city of *London*, esquire, citizen and
 haberdasher, of the one part, and of the *Old Bailey*,
London, gentleman, of the other part, *Witnesseth*, that the
 said and being elected and chosen, and
 having taken upon them the office of sheriffs of the city of
London, and also the office of sheriff of the county of *Middlesex*,
 for one whole year, commencing from the day of the
 date hereof, as well in consideration of the assured hope and
 trust that they the said and have of the fidelity
 and honest dealing of the said and of the confidence
 they repose in him, as for and in consideration of the cove-
 nants and agreements hereinafter contained, on the part and
 behalf of the said his heirs, executors and adminis-
 trators, to be kept and performed, as also for divers other
 good causes and considerations, them the said and
 thereunto moving, *have* and each of them *hath* (as
 much as in them lie, and they lawfully may) deputed, or-
 dained, constituted, authorized and appointed, and by these
 presents *do*, and each of them *doth*, depute, ordain, constitute,
 authorize and appoint, the said to be their gaoler or
 keeper, for and under them the said and
 of all and every such prisoner or prisoners, as now is or are
 in the custody or keeping of them the said and
 or any of their deputy or deputies, servants or assigns in the
 gaol or prison of *Newgate*, who shall at any time or times
 hereafter, during the shrievalty of them the said and
 be sent, brought or committed prisoners to the said
 gaol or prison of *Newgate*, or delivered or committed into the
 custody or keeping of them the said and or
 either of them, as sheriffs of *London* or sheriff of *Middlesex*,
 by virtue or means of writ or writs, process or processes,
 warrant or warrants, mandate or mandates, or otherwise on
 any pretence whatsoever, by any person or persons, having
 lawful authority in that behalf:—*But* subject nevertheless
 to the proviso, or power of displacing or removing the said
 from the said office of gaoler or keeper of *Newgate*, at
 the will and pleasure of the said and or
 either of them. *And* they the said and
have, and each of them *hath*, constituted and appointed, and
 by these presents *do*, and each of them *doth*, constitute and
 appoint the said for them, and in their names, or in
 the name of him the said and to and for the proper
 use of him the said to demand, take and receive all
 such just and lawful profits, benefits, commodities, advan-
 tages, fees and perquisites, as shall and may be lawfully had,
 made, gotten, received or become due, or as are or shall be
 during the said shrievalty of the said and
 incident, belonging or appertaining to the said place or office
 of gaoler or keeper of *Newgate*, arising therefrom, or by

reason thereof in anywise howsoever, as a recompense to the said for his trouble, risk and care in the execution of the said office of gaoler or keeper of *Newgate*, and undertaking at his own proper costs and charges, from time to time, during the shrievalty of the said and or either of them, and his the said being continued the gaoler or keeper of the said gaol of *Newgate*, by the said and or either of them, to find, provide and be at the expense of all necessary goods, utensils and furniture for the use of the said gaol or prison of *Newgate*, and also all requisite and necessary iron fetters, locks, bolts, manacles, handcuffs and other cuffs, ropes and other things usually found and provided by any gaoler or keeper, in or about the said prison, for the safe custody of the prisoners committed, or to be committed, during the said shrievalty of the said and thereto, according to his the said covenant, hereinafter for that purpose mentioned ;—*And also*, in consideration of the said and their heirs, executors and administrators, shall be freed and discharged by the said his heirs, executors and administrators, from time to time, during his continuance in the said office of gaoler or keeper of *Newgate*, under the said and or either of them, from all charges and damages whatsoever, relating to the said office of gaoler, as herein is mentioned.—*That* they the said and do severally covenant, promise and grant by these presents, and each of them, their and each and every of their executors and administrators, to and with the said his executors and administrators, that they the said and shall and will allow unto the said to and for his own use, all the just and lawful profits, benefits, commodities, advantages, fees and perquisites, as shall be received by the said by virtue of his said office, during so long time as he shall be continued therein, under them the said and or either of them :—*And*, in consideration of the premises, and for other good causes and considerations, him the said thereunto moving, he, the said for himself, his executors and administrators, and for every of them, *doth* covenant, promise and grant to and with the said and their executors and administrators, by these presents, that he the said shall well, truly, duly, honestly and sufficiently, (during so long as the said and or either of them, shall continue in the said office of sheriffs of *London* or sheriff of *Middlesex*, and shall think fit to continue the said in the office of gaoler or keeper of *Newgate*,) honestly execute and perform the same, and carefully, well and truly demean and behave himself therein, and in all matters and things whatsoever thereto relating, without committing any extortion, or accepting any

unlawful bribes, fees or rewards, either by himself, his agent or agents, deputy or deputies, servant or servants, or in any otherwise in trust for him or for his use: *And also*, that he the said or his deputy or deputies, agent or agents, shall and will from time to time, and at all times from henceforth, during his the said being continued in the said office of gaoler by the said and stand and be charged with all and every the prisoner and prisoners as is and are now remaining and being in or belonging to the said gaol of *Newgate*. *And likewise*, that the said or his agent, shall also from time to time, and at all times from henceforth, during the said being continued in the said office by the said and receive and take into his custody, and for safe keeping in the said gaol, all and every prisoner and prisoners who shall be from time to time hereafter (during so long time as they the said and shall continue sheriffs of or for the said city of *London*, and sheriff of the county of *Middlesex*, and continue the said in the said office) brought, committed or sent to the said gaol, or the custody of the said and or either of them, by virtue of any writ or writs, process or processes, mandate or mandates, warrant or warrants, by any person or persons whosoever having a lawful authority or power for that purpose: *And* the said prisoner or prisoners as shall be so brought, committed or sent as aforesaid, all the prisoner and prisoners now being and remaining in the said gaol of *Newgate*, shall and will well and truly, by himself, his deputy or deputies, keep safe and imprisoned, according to the tenor, purport and effect of the warrants, precepts or commandments, writs or authority by virtue of which he, she or they, or any of them, shall be or stand committed, charged or imprisoned, until such prisoner or prisoners shall be delivered by due course of law, or set free and at liberty with the allowance of the said and or their under-sheriff, or delivered over to the next succeeding sheriffs or sheriff upon the expiration of the shrievalty of the said and also that the said his deputy or deputies, agent or agents, servant or servants, shall not nor will permit or suffer any prisoner or prisoners whomsoever to be delivered out of the said gaol or prison, unless by due course of law, without a liberate or some other sufficient warrant from the said and or their under-sheriff, deputy or deputies, under seal of the office first had and obtained. *And further*, that he the said his heirs, executors or administrators, shall and will, at all times hereafter, acquit and discharge or otherwise well and sufficiently save, keep harmless, and indemnify the said and and each of them, and their and each of their heirs, executors and administrators, and their and each of their

them, their or either of their heirs, executors or administrators, in, about, for, touching or concerning the same : *And further*, that he the said shall and will from time to time, and at all times from henceforth, during all the time that he shall continue in the said office of gaoler under the said and make and keep a just, exact, true and perfect account or calendar in writing, containing as well all and every the name and names of all and every the prisoner and prisoners who now is and are, from time to time from henceforth hereafter during the shrievalty of the said and his the said continuance in the said office under them, shall be committed prisoner or prisoners to the said gaol of *Newgate*, as also of all and every the several cause and causes of the commitments and imprisonments of all and every such person and persons, and the time when committed, and by whom : *And likewise*, that the said his agent or agents, shall and will from time to time, and at all times during the shrievalty of the said and deliver unto them the said and and to all and every such person and persons as the said and or either of them, shall from time to time direct, and when and where, and as often from time to time as thereunto required, true and fair copies in writing of any such calendar and calendars : *And also* that the said shall and will from time to time, and at all times from henceforth, during his continuance in the said office, be truly diligent, attending, assisting and aiding unto the said and their secondaries, under-sheriff or under-sheriffs, in all affairs and business whatsoever, wherewith the said and is, are or shall be charged or employed, in or about the keeping of the said gaol or prison of *Newgate* : *And also*, that he the said shall and will freely remove, carry and convey all manner of prisoner and prisoners, as well at the time of the sessions of oyer and terminer and gaol delivery for the said city of *London* and county of *Middlesex*, as also at all other times ; and to such place or places, and to and before such court and courts, person and persons, and at and by such time and times as the said and or their under-sheriff or under-sheriffs, shall be charged or required, by any legal process or authority, to convey, carry and remove such prisoner or prisoners ; and lay out and expend all monies whatsoever as shall be occasioned thereby ; and the same prisoner and prisoners shall, from time to time, during the term aforesaid, safely remove and carry back again to the said gaol of *Newgate*, unless he, she or they shall be removed or delivered out of the custody of the said and by due course of law (all such allowance and allowances as shall be made, given, allowed or paid by and from the *Exchequer* or elsewhere, that

hath or have been usually paid by the secondaries of the *Poultry* and *Giltspur-Street* compters, *London*, to the undersheriff of *Middlesex*, or any or either of them, for the removing, carrying or recarrying such prisoner or prisoners, being permitted to be had and taken by the said for his own use.) *And likewise* that he the said shall and will, at his own proper costs and charges, find and provide, during the time he shall so continue in his said office, under the said and as well such bedding, furniture and other things, for the use of the said gaol of *Newgate*, as shall be requisite and necessary for the said and to find and provide, or cause to be found and provided, or as they are by law, custom or usage obliged to find and provide for the same, as also all and every such irons, links, locks, keys, bolts, manacles, handcuffs and other cuffs, and all kinds of fetters, and other utensils and things as shall be necessary to be used, or as there shall be occasion to be made use of in and about the said gaol, for the benefit, security and confinement of the person and persons who now are or shall be, during the shrievalty of the said and and his the said being continued keeper of the said gaol of *Newgate*, by the said and committed prisoners to the said gaol, to prevent their making any escapes. *Provided always*, and it is hereby declared and agreed, by and between the said parties hereto, that it is the true intent and meaning, and agreement of them, and of these presents, that it shall and may be lawful to and for the said and or either of them, at any time or times during their and either of their continuance in the said office or offices, at their, any or either of their free will and pleasure, and without giving or showing, or being compellable to give or show to him the said or to any other person or persons whatsoever, or to any court or courts at law or other judicature whatsoever, any cause or reason for their or either of their so doing, absolutely to displace or remove the said out of the said place or office of keeper or gaoler of the said gaol of *Newgate* aforesaid, for and during all the residue of the said term as shall be then to come of their shrievalty, any thing in these present indentures contained, or any other matter whatsoever to the contrary thereof in anywise notwithstanding. *And* the said for himself, his heirs, executors and administrators, and every of them, doth further covenant, promise and agree, to and with the said and their executors and administrators, by these presents, that in case of such displacing or removing of him the said as aforesaid, he the said after his being so displaced or removed, shall not nor will act as gaoler of the said gaol of *Newgate* in anywise howsoever, during the shrievalty of the said and

And also, that the said his executors or administrators, in case of such removal of him the said out of and from the said office, shall and will, within the space of three days then next ensuing, deliver over, or cause to be delivered over, unto the said and or one of them, their or one of their executors, administrators or assigns, or such person or persons as they, or either of them, shall depute, the possession of the said gaol, and all the prisoners therein, and all and all manner of books, papers and other things whatsoever relating or that have related to the said office since the said shall have acted therein by virtue of these presents, whole, safe, and in good order, and without alteration, razures, or obliterations to be made therein after such the determination of the will of the said and or either of them, as to the said office of gaoler, pursuant to the said power thereby reserved, In witness, &c.

Bond for executing Gaolership.

Obligation from R. A. to C. A. and R. G. Penalty, 2,000 l.

THE condition &c. That if the above bounden *R. A.* gaoler to the said *C. A.* and *R. G.* sheriff of the county of *M.* do from time to time receive and take into his ward and custody within the gaol in the county of *M.* aforesaid, all such person and persons, prisoner and prisoners, which shall be committed or sent to the said gaol, or any committed to the ward and custody of the said gaoler, by the said sheriff or his deputy, or by any justice or justices of the peace, or by any other having lawful authority to commit persons or prisoners to the said gaol, and the said persons and prisoners so committed as aforesaid do well and truly, duly and sufficiently, by his own proper person, or by his sufficient deputy or deputies, so keep, that the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, lands, tenements, goods and chattels, be saved harmless from all losses, penalties, amerciaments and damages whatsoever, as well against our lord the king, as also against all other person and persons of, for and concerning the custody and keeping of the said gaol and prisoners; and likewise do discharge, save and keep harmless the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, lands, tenements, goods and chattels, from time to time, and at all times hereafter, as well of convict persons, reprieves and felons, as of all other persons now committed for any contempts, condemnations, trespasses or misdemeanors, which may happen or chance hereafter to be committed to the said gaol for any of the causes aforesaid, during the time the said *C. A.* and *R. G.*

the said *J. T.* as well for his damages which he sustained by reason of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, and that I should have that money before the king at *Westminster*, on next after to render to the said *J. T.* for the debt and damages aforesaid, whereof the said *T. M.* was convicted; and whereas by virtue of the said writ, I, the said sheriff, took the within-written indenture of lease in execution, and on the day of last past, sold the same by public auction, to *S. R.* of, &c. mercer, (being the best bidder,) at and for the price or sum of 70*l.* Now know ye, that I the said *W. A.* sheriff as aforesaid, for and in consideration of the said sum of 70*l.* of lawful money of *Great Britain*, to me in hand paid by the said *S. R.* at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said *S. R.* the said within-written indenture of lease, and all my estate, right, title and interest therein. In witness, &c.

Bail-Bond.

KNOW all men by these presents, that we *J. F.* of, &c. *G. H.* of, &c. and *I. K.* of, &c. are held and firmly bound to *Thomas Fenn*, esq. sheriff of the county of in 40*l.* of lawful money of *Great Britain*, to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and faithfully made we bind ourselves, and each of us by himself, for the whole and every part thereof, and the heirs, executors and administrators of us, and every of us, firmly by these presents, sealed with our seals, dated this day of in the year of the reign of our sovereign lord *William* the fourth, &c., and in the year of our Lord 18

The condition of this obligation is such, that if the above-bounden *J. F.* do appear before the king, at *Westminster*, on to answer *Richard Roe* in a plea of trespass, and also to a bill of the said *Richard*, to be exhibited against the said *J. F.* for 40*l.* on promises, then this obligation to be void, and of no force, otherwise to stand and remain in full force, vigour and effect.

Sealed and delivered in }
The presence of }

In the condition of these bonds pursue the *substance of the writ*, such as “the day of the return, and “when to appear, as also to answer the plaintiff in his plea.”

Assignment of a Bail-Bond.

KNOW all men by these presents, that I, *A. B.* esquire, sheriff of the county of _____ within-named, have, at the request of *A. B.* the plaintiff, also within-named, assigned to him the said plaintiff the within-written bail-bond, pursuant to the statute in such case made and provided. In witness whereof I have hereunto set my hand and seal of office, this day of _____ in the year of our Lord

If the sheriff goes out of office, and he is afterwards to assign the bond, then call him "*late sheriff.*"

The sheriff usually takes an indemnity from the plaintiff, or his attorney; the charge is 5*s.* in town, 6*s.* 8*d.* country, but I do not find the necessity of indemnifying, nor are they bound to do it, for the act directs the assignment to be made.

Receipt for a Bail-Bond.

I DO hereby acknowledge to have had and received of and _____ and from *R. C.* esquire, sheriff of the county of *Berks*, the bail-bond for the appearance of *E. M.* before the justices of His Majesty's court of *Common Plcas*, at *Westminster*, [*the return*], to answer to *J. H.* in a plea of trespass on the case in the penalty of 100 *l.* and dated the 19th of *June* last past, together with an assignment thereon indorsed, pursuant to the statute in such case made and provided; *And* in consideration thereof, I do hereby promise to save harmless and indemnify the said sheriff of and from all actions, suits, amercements and costs whatsoever, relating to the said cause, bail-bond or assignment thereof, as witness my hand.

Bond of Indemnity to Sheriff for Payment of Money under a Fieri Facias.

[OBLIGATION from *A. B.*, *C. D.*, and *E. F.* of, &c. to *H. D.* esquire, sheriff of the county of _____ in the penal sum of _____]. (*Condition*). Whereas by virtue of His Majesty's writ of *feri facias*, directed unto the above-named sheriff, commanding him that he should cause to be made of the goods and chattels of *A. B.* in his bailiwick, as well a certain debt of 200 *l.* which the above bounden *A. B.* had recovered against him in His Majesty's court before the king himself, as also 63 *s.* which in His Majesty's same court was awarded to the above bounden *A. B.* as well for his damages which he sustained by reason of the detaining the said debt, as for his costs and charges by him about ~~his~~ suit in that behalf expended, and that the said sheriff should have that money before the king at *Westminster* on *Monday* next after the

Morrow of All Souls last past, to render to the above bounden *A. B.* for the debt and damages aforesaid, whereof the said *C. B.* was convicted. *And whereas*, by virtue of the said writ, the above-said sheriff hath taken goods and chattels of the said *C. B.* and sold the same for the sum of 100*l.* being the best price he could get for the same. And the above bounden *A. B.* hath applied to and requested of the said sheriff to pay him the monies so levied, on being properly indemnified, which the said sheriff hath agreed to do. *Now the condition* of this obligation is such, that if the said *A. B. C. D.*, and *E. F.*, their and each of their heirs, executors and administrators, save harmless and keep indemnified him the said sheriff, his under-sheriff, bailiffs and officers, of, from and against all manner of action and actions, suit and suits, either at law or in equity, brought or to be brought against them, or either of them, for or by reason of the levy or payment of the said sum of 100*l.* to the above bounden *A. B.* and also of, from and against all costs, charges, damages and expenses they or either of them may be put to for or on account thereof, then this obligation to be void, otherwise to be and remain in full force, strength and effect.

Bargain and Sale by Sheriff.

TO all to whom these presents shall come, I, *C. D.* of, &c. esquire, sheriff of the county of _____ send greeting : Whereas by virtue of His Majesty's writ of *fieri facias* unto me directed, commanding me, &c. [here recite to the end of the *fieri facias*,] (as by the said writ of *fieri facias*, relation being thereto add, will more fully and at large appear.) *Now know all men* by these presents, that I the said sheriff, for and in consideration of the sum of 100*l.* of lawful money of *Great Britain*, to me in hand paid by *C. K.* of, &c. esquire, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have bargained and sold, and by these presents do bargain and sell unto the said *C. K.* all and singular the goods and chattels following, by me taken in execution by virtue of the said writ of *fieri facias*, (that is to say,) one chest of drawers, and one feather bed, [here set forth the inventory of the goods,] all which said goods and chattels, I the said sheriff, at the sealing and delivery hereof, have delivered to the said *C. K.* to have and to hold the same unto the said *C. K.* his executors, administrators and assigns, as his and their own proper goods and chattels, to his and their own use and benefit for ever. In witness whereof I the said sheriff have hereunto set my hand and seal of office, this _____ day of _____ in the _____ year of the reign of, &c. and in the year of our

An Act to regulate the Sale of Farming Stock taken in Execution. 56 Geo. 3, c. 50.

Sale of farming
stock.

Sheriff not to
sell or carry
away straw,
chaff or turnips,
nor any other
produce, con-
trary to the
covenant.

s. 1.

Tenant to give
notice of the
existence of
covenants ;

and sheriff to
give notice to
the owner or
landlord.

s. 2.

WHEREAS it is expedient that the execution of legal process should be so regulated as to be consistent with good husbandry, and the effect and intent of covenants and agreements entered into between the owners and occupiers of land let to farm ; be it enacted by, &c. that from and after the passing of this Act no sheriff or other officer in *England* or *Wales* shall, by virtue of any process of any court of law, carry off, or sell or dispose of, for the purpose of being carried off, from any lands let to farm, any straw threshed or unthreshed, or any straw of crops growing, or any chaff, colder or any turnips, or any manure, compost, ashes or seaweed, in any case whatsoever ; nor any hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables, being produce of such lands, in any case where, according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon, and of which covenants or agreements such sheriff, &c. shall have received a written notice before he shall have proceeded to sale.

And be it further enacted, that the tenant or occupier of any lands let to farm, against whose goods any process of law shall issue, whereby such goods may be taken and sold, shall, on having knowledge of such process, give a written notice to the sheriff, &c. executing the same, of such covenants or agreements whereof he or she shall have knowledge, and which may relate to and regulate, or are intended to regulate, the use and expenditure of the crops or produce grown or growing thereon, and also of the name and residence of the owner or landlord of such lands ; and such sheriff, &c. shall forthwith, on executing such process, and before any sale shall have been proceeded in, send a notice by the general post to the owner or landlord of such lands, in all cases where such owner or landlord shall be resident in any part of this united kingdom, and shall have been made known to and ascertained by such sheriff, &c. and also to the known steward or agent of such landlord or owner in respect of such lands, stating to such owner, landlord and agent the fact of possession having been taken of any crop or produce hereinbefore mentioned ; and such sheriff, &c. shall in all cases of the absence or silence of such landlord or owner, or his or her agent, postpone and delay the sale of such crops or produce until the latest day he lawfully can or may appoint for such sale.

Provided always, and be it further enacted, that such sheriff, &c. executing such process, may dispose of any crops or produce hereinbefore mentioned to any person or persons who shall agree in writing with such sheriff, &c. in cases where no covenant or written agreement shall be shown, to use and expend the same on such lands in such manner as shall accord with the custom of the country; and in cases where any covenant or written agreement shall be shown, then according to such covenant or written agreement; and after such sale or disposal so qualified, it shall be lawful for such person or persons to use all such necessary barns, &c. for the purpose of consuming such crops or produce, as such sheriff, &c. shall allot or assign to them for that purpose, and which such tenant or occupier would have been entitled to and ought to have used for the like purpose on such lands.

Sheriff may dispose of produce, to be expended on the land.

s. 3.

And be it further enacted, that such sheriff, &c. shall, on the request of any landlord or owner who shall be aggrieved by any breach of such agreement, permit such landlord or owner to bring any action or actions in the name of such sheriff, &c. for the recovery of damages in respect of such breach; such landlord or owner having nevertheless fully indemnified such sheriff, &c. against all costs whatsoever, and all loss and damage, before any such action shall be commenced.

Sheriff to assign agreement to landlord.

s. 4.

And be it further enacted, that such sheriff, &c. shall, before any sale of any crops or produce of any lands let to farm shall be proceeded in, make, by all ways and means, due inquiry within the parish where such lands shall be situate, as to the name and residence of the landlord or owner of such lands.

Sheriff to inquire as to the name and residence of the landlord.

s. 5.

And be it further enacted, that in all cases where any purchaser of any crop or produce hereinbefore mentioned shall have entered into any agreement with such sheriff, &c. touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent on any corn, hay, straw, or other produce thereof, which at the time of such sale, and the execution of such agreement entered into under the provisions of this act, shall have been severed from the soil, and sold, subject to such agreement by such sheriff, &c. nor on any turnips, whether drawn or growing, if sold according to the provisions of this act; nor on any horses, sheep or other cattle, nor on any beasts whatsoever, nor on any waggons, carts or other implements of husbandry which any person or persons shall employ, keep or use on such lands, for the purpose of threshing out, carrying or consuming any such corn, hay, straw, turnips or other produce, under the provisions of the act, and the agreement or agreements directed to be entered into between the sheriff, &c. and the purchaser of such crops and produce as hereinbefore are mentioned.

Landlord not to distrain for rent on purchasers of crops severed from the soil.

s. 6.

Sheriff not to
sell any clover,
&c. growing
with corn.
s. 7.

And be it further enacted, that no sheriff, &c. shall, by virtue of any process whatsoever, sell or dispose of any clover, ryegrass, or any artificial grass or grasses whatsoever, which shall be newly sown and be growing under any crop of standing corn.

Act not to
affect contracts.
s. 8.

Provided always, and be it further enacted, that this act shall not extend to any straw, turnips or other articles which the tenant may remove from the farm consistently with some contract in writing.

When sheriff is
to be liable for
damages.
s. 9.

And be it further enacted, that in every case where any action shall be brought against such sheriff, &c. for any breach or omission of compliance with the provisions of this act, no plaintiff shall be entitled to recover any damages against such sheriff, &c. unless it shall be proved on the trial of such action that such breach or omission was wilful on the part of such sheriff, &c.

Indemnity to
sheriff.
s. 10.

And be it further enacted, that no sheriff, &c. nor any person who shall purchase any hay, straw, chaff, turnips, grass or grasses, or other produce and things hereinbefore mentioned, under the provisions of this act, nor his, her or their servant or servants, shall be deemed or taken to be a trespasser by reason of his, her or their coming upon or remaining in possession of any barns or other buildings, yards or fields, for the purpose of threshing out or consuming any straw, hay, turnips or other produce hereinbefore mentioned, under the provisions of this act, or for doing any matter or thing whatsoever fit and necessary to be done for the purpose of executing the same, and carrying into effect all stipulations contained in any agreement made under such provisions, though such acts shall have been done by such sheriff, &c. and by such person, &c. his, her or their servants, after the return of the process under which such sheriff, &c. shall have acted.

In what case
assignee of
bankrupt, &c.
may take crops.
s. 11.

And be it further enacted, that no assignee of any bankrupt, or of any insolvent debtor's estate, nor any assignee under any bill of sale, nor any purchaser of the goods, chattels, stock or crop of any person or persons engaged or employed in husbandry on any lands let to farm, shall take, use or dispose of any hay, straw, grass or grasses, turnips or other roots, or any other produce of such lands, or any manure, compost, ashes, seaweed, or other dressings intended for such lands, and being thereon, in any other manner and for any other purpose than such bankrupt, insolvent, debtor, or other person so employed in husbandry, ought to have taken, used or disposed of the same if no commission of bankruptcy had issued, or no such assignment or assignments had been executed, or sale made.

THE
OFFICE AND DUTY
OF
CORONERS.

CORONERS are very ancient officers at common law ; Coroners are ancient officers.
so called, because they deal principally with the pleas of the crown (*a*) ; and in former days were the principal conservators of the peace within their counties ; and may now bind to the peace any person who makes an affray in their presence (*b*).

There are a certain number of them in every county ; A certain number in every county.
in some more, in others less, according as the usage hath been. A writ for an additional one has been granted for an insulated part of a county when become necessary (*c*).

The coroner is of equal antiquity with the sheriff, and was ordained with him to keep the peace when the earls gave up the wardship of the county (*d*). Equal antiquity with sheriff.

The court of the coroner is a court of record to inquire, when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end. And this he is only entitled to do *super visum corporis* (*e*). Court of coroner.

The coroner's duty being partly *judicial*, it cannot be executed by deputy. Where a jury had first seen the body, and then been sworn by the clerk of the coroner,

(*a*) 4 Inst. 471. (*d*) Mirr. c. 1. s. 3.
(*b*) 2 Haw. P. C. c. 28. s. 5. (*e*) 4 Inst. 271. 2 Hale's P. C. 53. 2 Haw. P. C. 42.
4 Inst. 271.
(*c*) *In re Salop*, 3 Swanst. 181.

not in his presence; the coroner afterwards viewed the body and the jury were sworn afresh, but not *super visum corporis*; the court considered the whole proceeding as irregular and extra-judicial (*f*). To make a good inquest, the coroner and jury must be both present, and the jury sworn in his presence *super visum corporis*.

Three kinds of coroners.

Coroners are of three kinds; viz. 1. *By virtue of office*. 2. *By charter or commission*. 3. *By election*.

Ch. J. of K. B.

1. The lord chief justice of the King's Bench is, by virtue of his office, principal coroner of *England*. And may if he pleases exercise the jurisdiction of coroner in any part of the realm (*g*).

The *other* judges also of this court are sovereign coroners (*h*).

By charter or commission.

2. Coroners *virtute cartæ sive commissionis*; and these ordinarily were made by grant or commission, without election; such are the coroners of particular lords of liberties or franchises, who by charter have power to create their own coroners, or to be coroners themselves: Thus the *mayor of London* is by charter of 18 *Ed.* 4. coroner of *London*; the *Bishop of Ely* also hath power to make coroners in the Isle of *Ely* by the charter of *H.* 7; Queen *Catherine* had the hundred of *Colridge* granted to her by the king, 35 *H.* 8. with power to nominate coroners (*i*).

28 E. 3. c. 6.
Though the statute gives power to elect coroners for counties, yet there is a saving to the king, &c.

And therefore, where the power of electing coroners is confirmed to the counties, yet there is a saving to the king and other lords which ought to make such coroners, their seigniories and franchises; so that the king may grant coroners within certain precincts; and lords of franchises, that have power to nominate coroners by charter, may still do it without election.

The admiralty and verge.

There are *two* great precincts too, that, by the king's grants, have power of granting or having coroners, viz. the jurisdiction of the admiralty, and the *verge*; the former for inquisitions of death on the high seas; the latter within the verge. The coroner of the admiralty is appointed by the lord high admiral: the appointment of coroner of the verge is settled in perpetuity in the lord high steward, or lord great master of the king's house, for the time being.

Coroner of admiralty.

33 H. 8. c. 12.

(*f*) R. v. Ferrand, 3 B. & Ald.
260. Hawk. b. 2. c. 9. s. 21. 2 H. H.
58. 60.

(*g*) 4 Rep. 57.
(*h*) 4 Inst. 173. 4 Co. Rep. 57.
(*i*) 9 Co. Rep. 29, b.

3. Coroners *virtute electionis* are those who by the stat. of *West.* 1, and stat. 28 *Ed.* 3. are eligible by the county, in the county-court, by the king's writ *de coronatore eligendo*.

Coroners *virtute electionis*.
c. 10.
c. 6.

London and the *Cinque Ports*, from great antiquity, have their own coroner. The *dean and chapter of Westminster* have their own coroner, who by their appointment is coronor for the city and liberty of *Westminster*; and in the *Stannaries* in *Cornwall* the wardens are coroners.

London and
Cinque Ports,
Westminster,
Stannaries in
Cornwall.

In each of the twelve shires in *Wales*, in *Cheshire*, &c. there are only two coroners, which was settled by statute 33 *H.* 8. and 34 *H.* 8 (*k*).

c. 13.
c. 26.

Coroner of the Admiralty.

On the death of a man, or in any case belonging to the coroner, arising upon the high sea, inquisitions have been usually taken by the coroners appointed by the king or his admiral, and here the coroners of the county have no jurisdiction (*l*).

Coroner of
admiralty.

But of deaths of men happening upon arms of the sea below the bridges within the bodies of counties, as upon the *Thames* or *Severn*, &c. in ships there hovering, though the coroner of the admiralty hath jurisdiction, yet it is not exclusive of the jurisdiction of the coroner of the county, who may inquire in any great river upon these articles—where a man can see from one side to the other (*m*).

By the stat. 15 *R.* 2. in case of the death of a man, or maihem in great ships hovering in the main stream of great rivers below the bridges, nigh to the sea, the admiral shall have jurisdiction.

Main stream.
c. 3.

This statute first gave the admiral jurisdiction in any river or creek within the body of the county, which only extends to the death of a man, or maihem (*n*).

Only these things are observable: 1. That it extends only to rivers that are arms of the sea, namely, that flow and reflow, and bear great ships. 2. It extends only to such deaths as happen in those great ships, not in small vessels. 3. That by that statute, this jurisdiction is annexed to the court of Admiralty, and consequently they

What it extends
to.

(*k*) 4 Inst. 271.

(*m*) 8 E. 2. Cor. 399. Hal. P. C. 54.

(*l*) 2 Hal. P. C. 54.

(*n*) 2 Hal. P. C. 16.

may proceed therein by proofs according to the course of the marine law, and hold their sessions where they please, though they did often before the statute of 28 H. 8, proceed by commission under the great seal, and by inquisition (*o*).

General commission of oyer and terminer to hear and determine felonies have concurrent jurisdiction with the Admiralty.

This is not exclusive of the courts of common law; and therefore the King's Bench, on the general commission of oyer and terminer to hear and determine felonies, &c. in the county, have herein a concurrent jurisdiction with the court of Admiralty. And as well the coroner of the county, as of the admiralty, may make inquisitions upon such deaths happening in great rivers, namely, arms of the sea that flow and reflow beneath the first bridges (*p*).

If a man of war is *infra corpus com.*

When a man of war is *infra corpus com.* the land coroner may go aboard, and if opposed, the court will grant an information. As where a captain of a man of war, refused to admit the coroner of *Portsmouth* and his jury to view the body of a sailor who hanged himself aboard his ship lying within the harbour of *Portsmouth* and the liberties of the borough (*q*).

Inquisition taken before coroner of the Admiralty. c. 15.

Inquisitions taken before the coroner of the admiralty are to be returned before the commissioners upon the stat. 28 H. 8.; but the inquisitions taken before the coroner of the county are to be returned before the commissioners of *gaol delivery* of the county; or into the K. B. (*r*).

Coroner of the Verge.

Coroner of the verge or king's house.

33 H. 8. c. 12.

The other great jurisdiction is the *coroner* of the *king's house*, usually called the *coroner of the verge*, who it seems anciently was appointed by the king's letters patent, but by statute the granting thereof is settled in perpetuity in the *lord steward*, or lord great master of the king's house for the time being (*s*).

Anciently had power to do all things in the verge, 28 E. 1. c. 3.

But now the coroner of the county shall join.

Anciently the coroner of the verge had power to do all things within the verge belonging to the office of the coroner, exclusive of the coroner of the county; but because the king's court was moveable often, by stat. of *Articuli super cartas*, c. 3, it is ordained, that on the death of a man the coroner of the county shall join in inquisition to be taken thereof with the coroner of the *king's house*;

(*o*) 2 Hal. P. C. 16.

(*p*) 8 E. 2. Coron. 399.

(*q*) Rex v. Solgard, 2 Str. 1095.

(*r*) Hal. P. C. 54. Umfrev. 147.

(*s*) 2 Hale, 54.

and if it happen it cannot be determined before the steward, process and proceedings shall be thereupon had at common law.

But yet in the case of death within the verge the coroner of the county cannot take an inquisition without the coroner of the verge; and if he doth it is void; but if one person be coroner of the county, and also of the verge, the inquisition before him is as good as if the offices had been in several persons, and taken by both (*t*). And though the court remove, yet he may proceed upon that inquisition as coroner of the county (*u*).

Coroner of the county cannot take inquisition without coroner of the verge.

If the court remove.

But if a murder or manslaughter be done within the precincts of the king's palace limited by the stat. 33 H. 8, then by the statute the inquisition shall be taken by the coroner of the household, without the adjoining or assisting of any coroner of any county, by twelve or more of the yeomen officers of the king's household; and this is enacted to be as sufficient as if taken by the coroner of the county, and the method of the return and proceeding upon those inquisitions before the lord steward is therein declared and enacted.

If a murder, &c. done within precincts of palace, inquisition to be taken by coroner of household; 33 H. 8. c. 12.

The statute enacts,

That all inquisitions upon the view of persons slain within any of the king's palaces or houses, &c. at such time as His Majesty shall be there demurrant, or abiding, in his royal person, shall be taken by the coroner for the time being of the *king's household*, without any adjoining or assisting of another coroner of any shire within this realm, by the oath of 12 or more of the yeomen officers of the king's household, returned by the two clerks controllers, the clerks of the check, and the clerks marshals, or one of them, for the time being, of the said household, to whom the said coroner of the said household shall direct his precept; which coroner shall be from time to time appointed by the lord great master, or lord steward for the time being; and that the said coroner shall certify under his seal, and the seals of such persons as shall be sworn before him, all such inquisitions before the said lord master, or lord steward.

The enacting part of the statute 33 H. 8. c. 12.

Coroners of the County.

The coroner of the county is chosen by virtue of the king's writ *de coronatore eligendo*, directed to the sheriff, commanding him, in full county, and with the assent of

How chosen.

(*t*) Hal. P. C. 55.

(*u*) 4 Co. 45.

the same county, to elect a person coroner who best knoweth and can intend the office, and do and keep those things which concern the office of coroner in the county.

A coroner is *exempted* from serving on juries (*x*). In the county of *Middlesex* there are two coroners, one of whom lives eastward, the other westward.

c. 10.

In all shires sufficient men shall be chosen coroners.

By stat. 3 *Ed.* 1. it is provided,

That through all shires sufficient men shall be chosen to be coroners, of the most loyal and most wise knights, which know, will and may best attend upon such offices, and which lawfully shall attach and present pleas of the crown.

None under degree of knights were chosen in ancient times; but now men of substance and credit sufficient.

In ancient time, none under this degree were chosen, and not being a knight was a sufficient cause for the discharge of a coroner (*y*). But as the chief intent of this statute was to prevent the choosing of persons of mean ability, it seems the design of it is sufficiently answered by choosing men of substance and credit; and as the constant usage for several ages past has been accordingly, it seems to be no objection at this day that the person chosen is not a knight (*z*).

st. 1. c. 8.

To have land to answer.

By stat. 14 *E.* 3, it is enacted,

That no coroner be chosen unless he have land in fee sufficient in the same county, whereof he may answer to all manner of people (*a*).

c. 6.

All coroners of counties to be chosen in the full counties.

By 28 *Ed.* 3, it is enacted,

That all coroners of the counties shall be chosen in the full counties, by the commons of the same counties, of the most meet and lawful people that shall be found in the same counties, to execute the said office; save always to the king and other lords, who ought to make such coroners, their seignories and franchises.

The king may lawfully claim such franchise by prescription, and other lords may claim it by grant from the crown (*b*).

Freeholders only to vote.

The office does not determine by demise of king.

None but freeholders have votes (*c*).

Inasmuch as their office is by election, their offices do not determine by the demise of the king (*d*). Hence also,

(*x*) Dougl. 191.

(*b*) 2 Hale, 53.

(*y*) 4 Inst. 271.

(*c*) 2 H. P. C. c. 9. s. 10. 2 Inst.

(*z*) 2 Leon. 260. 2 Haw. P. C. 99. 2 Roll. Abr. 121.

c. 9. s. 3.

(*d*) Dy. 165, a,

(*a*) 2 Inst. 175.

In some counties there are only two coroners, in some four, in some six, and by stat. 34 & 35 *H.* 8. c. 26, in each county in *Wales* and in *Chester* two (*f*).

William the 4th, &c. To the sheriff of _____ greeting :
for asmuch as *A. B.* esq. late one of the coroners of your
county, is deceased, we command you that if it be so, then
in your full county, by the assent of the same county, you
cause another coroner to be chosen in the place of the said
A. B. (who having taken his oath as the manner is) may
thereupon do and keep those things which concern the
office of a coroner in the said county. And you shall
cause such a one to be chosen as best knoweth and in-
tendeth that office : and certify unto us his name. Wit-
ness ourself at *Westminster* the _____ day of _____ in the
_____ year of our reign.

The writ de
crownatore
eligendo.

This writ is a writ close.

Upon the death of the coroner the first step to be taken by the candidate who wishes to apply for the writ is to have an affidavit of the death of the late coroner, which is to be sworn before a master in Chancery in town, or if in the country, before a master extraordinary in Chancery, the form of which will be thus :

R. R., of in the county of gentleman,
maketh oath, and saith, that *Robert Brown*, esq., late one
of the coroners of the said county, departed this life on or
about the last past. R. R. Sworn, &c.

The affidavit, when sworn, is annexed to a petition of freeholders, who subscribe the same.

*To the Right Honourable the Lord High Chancellor of
Great Britain :*

Petition for the writ, to be ingrossed on stamped paper.

The humble petition of us, whose names are hereunto subscribed, on behalf of ourselves, and others, freeholders of the county of

Sheweth,

That *R. B.* Esq., late one of the coroners for the said county of _____ departed this life on _____ as by the affidavit annexed appears. And that it will be for His Majesty's service, and general good of the said county, to have a proper person elected coroner in the room and stead of the said *R. B.*, deceased.

Your petitioners therefore most humbly pray your lordship's order, that the cursitor of the said county do make out a writ *de coronatore eligendo*, for the election of a new coroner for the said county of _____ in the room and stead of the said *R. B.*, deceased. And your petitioners shall ever pray, &c.

This petition is to be subscribed by freeholders only—gentlemen of distinction, and some of the commission of the peace.

The petition where to be lodged.

The petition and affidavit is to be lodged with the clerk of the crown in Chancery, in the Rolls-yard, and with whom the agent signs an undertaking prepared agreeable to the writ, engaging, "that due notice shall be given in all the market-towns of the time and place for the execution of the writ six days before the execution." The clerk gets the writ sealed, which is to be delivered to the sheriff.

The writ and return is to be filed in the Petty-bag office.

The sheriff's duty in this respect, on receipt of the writ, is stated *supra*, p. 224, with the precept and return. When the coroner is sworn into the office, the business of the day is over ; and the coroner is then in full possession of his office. But he is still to remember to qualify in due time pursuant to the act, by taking the sacrament, and oaths and declaration appointed to be taken by sheriffs and coroners, stated in the Office of Sheriff, *supra*, p. 15.

Of his Authority in taking Inquisitions.

When the coroner receives notice of a violent death, casualty, or misadventure, which regularly ought to be given

from the proper or peace-officer of the parish, place or precinct where the body lies dead, he is then to issue his precept or warrant to summon a jury to appear at a particular time and place named, to inquire when, how, and by what means the deceased came by his death; which warrant is directed to the peace-officers of the parish, place or precinct, "where the party lies dead," and to others of the next adjoining parishes, &c. pursuant to the stat. 4 *Ed. 1. st. 2*, called the *statute de officio coronatoris*, which enacts that the coroner, upon information, shall go to the place where any be slain, or suddenly dead or wounded, and shall forthwith command four of the next towns, or five or six, to appear before him in such a place; and when they are come thither, the coroner, upon the oath of them, shall inquire in this manner, that is, to wit, 1. If they know where the person was slain; whether it were in any house, field, bed, tavern or company, and who were there.

Likewise it is to be inquired who were culpable, either of the act or of the force; and who were present, either men or women, and of what age soever they be, (if they can speak, or have any discretion.)

And how many soever be found culpable by inquisition, in any the manners aforesaid, they shall be taken and delivered to the sheriff, and shall be committed to the gaol; and such as be founden, and be not culpable, shall be attached until the coming of the justices, and their names shall be written in the coroner's rolls.

2. If it fortune any such man to be slain, who is found in the fields, or in the woods; first, it is to be inquired, whether he were slain in the same place or not.

And if he were brought and laid there, they shall do as much as they can to follow their steps that brought the body thither; whether he were brought upon a horse or in a cart; it shall be inquired also, if the dead person were known, or else a stranger, and where he lay the night before.

And if any be found culpable of the murder, the coroner shall immediately go into his house, and shall inquire what goods he hath, and what corn he hath in his grange; and if he be a *freeman*, they shall inquire how much land he hath, and what it is worth yearly; and further, what corn he hath upon the ground; and when they have thus

inquired upon every thing, they shall cause all the land, corn and goods to be valued in like manner as if they should be sold incontinently; and thereupon they shall be delivered to the whole township, which shall be answerable before the justices for all.

Burial.

And likewise of his freehold, how much it is worth yearly, over and above the service due to the lord of the fee, and the land shall remain in the king's hands until the lords of the fee have made fine for it; and immediately upon these things being inquired, the bodies of such persons, being dead or slain, shall be buried.

3. In like manner it is to be inquired of them that be drowned or suddenly dead; and after such bodies are to be seen, whether they were so drowned, or slain, or strangled, by the sign of a cord tied strait about their necks, or about any of their members, or upon any other hurt found upon their bodies, whereupon they shall proceed in the form aforesaid; and if they were not slain, then ought the coroner to attach the finders, and all others in company.

4. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound or hurt is, and how many be culpable, and how many wounds there be, and who gave the wounds.

All which things must be inrolled in the roll of the coroners.

5. Also horses, boats, carts, &c. whereby any are slain, that properly are called *deodands*, shall be valued and delivered unto the towns, as before is said.

3 H. 7. c. 1.

Every coroner, upon a view of the dead body, shall inquire of the person that hath done the death or murder; also of their abettors and consenters, and who were present when it was done, and the names of the persons so present and found, shall inrol and certify (g).

Coroner by the statute is not restrained from any branch of his power.

It is observable that this statute being wholly directory, and in affirmance of the common law, the coroner is not thereby restrained from any branch of his power, nor excused from any part of his duty not mentioned in it which was incident to his office before; and therefore, though the statute mentions only inquiries of the deaths of persons slain, drowned, or suddenly dead, yet the coro-

(g) Jenk. 202.

ner ought also to inquire of the death of those who die in prison (*h*), to the end that the public may be satisfied whether such persons came to their end by the common course of nature, or by some unlawful violence, or unreasonable hardships, put on them by those under whose power they were confined.

If in an inquisition *super visum corporis*, the year of our Lord in the caption is in common figures, it shall be quashed. It should be in words at length, or at least in Roman numerals (*i*).

An inquisition of death, by the oaths of lawful men of the county, is sufficient, without saying they were of the next towns; so that it appears at what place, and by what jurors by name, it was taken, and that such jurors were sworn (*k*).

An inquisition by the oaths of lawful men sufficient.

The qualification of jurors to serve on inquests, and power of the coroner to fine for non-attendance, is now regulated by 6 *Geo.* 4. (*Vid. supra*, p. 265.)

c. 50, s. 52, 53.

It is clearly agreed that the inquest shall be taken on the view of the dead body, although the statute be silent in this matter; and that an inquest otherwise taken by the coroner is void (*l*).

Inquest to be taken on the view of the body.

Therefore, where the body cannot be found, or is so putrefied that a view would be of no service, the coroner, without a special commission, cannot take the inquest; but in such cases it shall be taken by justices of the peace, or other justices authorized, by the testimony of witnesses (*m*).

Where body cannot be found, or is so putrefied that a view would be of no service, it shall be taken by justices, &c.

If the coroner take his inquisition on view of the body after long putrefaction, it is in the discretion of the court of *K. B.* whether they will receive it or not (*n*).

If a dead body whereon an inquest ought to be taken be interred, or suffered to putrefy, before the coroner hath viewed it, the gaoler or township shall be amerced (*o*).

If interred before inquest.

And it is indictable as a misdemeanor to bury the body before, or without sending for the coroner (*p*).

- (*h*) 2 Hawk. P. C. c. 9. s. 21. (m) Vent. 352. Hawk. P. C. c. 9. s. 25.
 3 Inst. 52. Staunf. P. C. 51. (n) R. v. Causey, Hil. 3 Geo. 2.
 (i) Stran. 261. (o) 1 Bac. Abr. n. 753.
 (k) 2 Hawk. P. C. c. 9. s. 22. (p) Staunf. P. C. 51.
 1 Sid. 204. Cro. Eliz. 31. (p) 1 Salk. 377.
 (l) 2 Hawk. P. C. c. 9. s. 23.

May in a convenient time take up a dead body.

Inquisition need not be taken in the very same place.

What inquiries he may or may not make.

He is to inquire of all circumstances.

Also it hath been resolved, that a coroner may lawfully, within convenient time after the death, take up a dead body out of the grave, in order to view it, not only for the taking of an inquest where none hath been taken before, but also for the taking of a good one where an insufficient one hath been taken before (*q*): as the space of 14 days (*r*).

It is *not* necessary that the inquisition be taken in the very same place where the body was viewed; and it hath been resolved, that an inquisition taken at *D.* on the view of the body lying dead at *L.* may be good (*s*).

The coroner cannot inquire of any accessories *after* the fact (*t*); but he may make inquiry of the accessories *before* the fact, and also whether any so guilty have fled for the same (*u*).

A coroner may and ought to inquire of all circumstances of the party's death, and also of all things which occasioned it (*x*); and therefore it is said, that if it be found by his inquest that the person deceased was killed by a fall from a bridge into a river, and that the bridge was out of repair by the default of the inhabitants of such a town, and that those inhabitants are bound to repair it, the township shall be amerced (*y*).

c. 1.

If any person be slain, &c. in the day, and murderers escape.

If coroner be remiss in duty.

By 3 *H.* 7.

If any person be slain or murdered in the day, and the murderer escape untaken, the township where the said deed is so done shall be amerced for the said escape; and that the coroner have authority to inquire thereof upon the view of the body. And that if any coroner be remiss, and make not inquisitions upon the view of the body dead, he shall forfeit for every default 100*s*.

After felony found, coroners to deliver inquisitions, &c.

That after the felony found, the coroners deliver their inquisition before the justices of the next gaol delivery, in the shire where the inquisition is taken; the same justices to proceed against such murderer if they be in gaol, or else the same justices to put the same inquisition afore the king in his bench: and if any coroner do not in such manner certify his inquisition, he shall forfeit 100*s*.

c. 13. s. 5.

Coroner shall put in writing

By the 1 & 2 *Ph.* & *M.*

Every coroner upon any inquisition before him found,

(*q*) Staunf. P.C. 52. Bro. Cor. 167.

(*r*) 2 Hawk. P. C. c. 9. s. 23.

Carth. 72.

(*s*) 2 Hawk. c. 9. s. 25. Latch, 166. Poph. 299.

(*t*) Moor, 20. pl. 95.

(*u*) 2 Hawk. c. 9. s. 27.

(*x*) Aley, 51.

(*y*) 2 Hawk. P. C. c. 9. s. 28.

whereby any person shall be indicted for murder or manslaughter, or as accessory before the offence committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind over the witnesses by recognizance or obligation to the next gaol delivery to be holden for the county, city, or town corporate where the trial shall be, then and there to give evidence against the party so indicted at the time of trial; and shall certify as well the same evidence as such recognizance, bond or bonds, in writing, as he shall take; together with the inquisition or indictment before him taken and found, at or before the time of his said trial, on pain of being fined by the court, and estreat the same.

the effect of the evidence given, and bind over witnesses.

Sir *Matthew Hale* says, the difference of penning this act, touching the examination taken by the justices of the peace and the coroner, is observable: the justices of the peace are to put into writing "the information against the felon of the fact and circumstances" thereof, "or so much thereof" as shall be "material to prove the felony; but the coroner is to put into writing the effect of the evidence given to the jury before him, being material," without saying, "so much as is material to prove the felony," but the whole evidence given, whether to prove or disprove the felony; and *all* this evidence is to be upon oath, before the coroner's inquest, whether it make for or against the prisoner (z).

Hale's distinction touching examinations taken by justices and coroner.

Coroner to put in writing evidence.

So that I do conceive the coroner's inquest ought in all cases to hear the evidence upon oath, "as well that which maketh for," as "that which maketh against the prisoner;" and the whole evidence ought to be returned with the inquisition (a).

Coroner's inquest to hear the evidence on oath.

A party who had no interest in the subject of the inquest, and not called on to give evidence, having been put out of the room after a refusal to depart, held not entitled to maintain an action of trespass against the coroner (b).

And a party publishing the proceedings before the coroner previous to the trial, with comments, was held liable to a criminal information, although no malicious motive shown, and the statements correct (c).

A presentment or inquisition found by the grand jury at the general sessions of *oyer* and *terminer* for the county of *York*, was quashed. In this case the coroner

Presentment or inquisition found by the grand jury, &c.

(z) 2 Hal. P. C. 61.

(b) Garrett v. Ferrand, 6 B. & Cr. 611.

(a) 1b. 62.

(c) R. v. Fleet, 1 B. & Ald. 379.

quashed, though
the coroner did
not take one.

had not taken any inquisition at all upon the death, so that the lord of the manor, finding himself likely to lose his *deodand*, had made this application to the assizes, where the grand jury found the inquisition or presentment, which was afterwards removed to the *K. B.* by *certiorari*, condemning secret inquests and offices (*d*).

This is an office of intitling, and therefore ought to be publicly and openly found (*e*).

No power to
take any indict-
ment except of
death.

According to some opinions, a coroner, *ex officio*, hath no power to take any indictment, except of the death of a man (*f*).

c. 7.

By 1 *H.* 8.

Misadventure.

"If any coroner shall not endeavour himself to do his office upon any person dead by *misadventure* he shall forfeit 40 s.

Persons dying in Gaol.

Prisoner.

The coroner ought also to inquire of the death of all persons who die in prison, that it be known whether they died by violence or any unreasonable hardships; for if a prisoner, by the duress of the gaoler, comes to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty (*g*).

Who jury are
to be.

And this inquest upon prisoners ought to consist of a party jury, that is, six of the prisoners (if so many there be, and six of the next vill or parish, not prisoners (*h*).

If death happen
in *K. B.*

If a death happen in the *King's Bench* prison, the clerk of the crown, who is the coroner for that court, is to view the body (*i*).

If prisoner die
a natural death.

If a prisoner in gaol die a natural death, yet regularly, the gaoler ought to send for the coroner to inquire, because it may be possibly presumed that the prisoner died by the ill-usage of the gaoler (*k*).

Treasure-trove.

There seems to be no doubt but that the coroner may and ought to inquire of *treasure-trove*; concerning which it is enacted by 4 *Ed.* 1. *de officio coronatoris*,

"That a coroner, being certified by the king's bailiffs, or
"other honest men of the county, shall go to the places
"where treasure is said to be found."

(*d*) *Rex v. Killinghall*, 1 Burr. 17.

(*g*) 3 Inst. 52. 91.

4 Inst. 196, 7, 8.

(*h*) *Umfrev.* 212, 213.

(*e*) Burr. 19.

(*i*) 8 E. 2. Coron. 321. 2 Hal.

(*f*) *Staunf.* P. C. 51. 4 Inst. 271.

P. C. 58.

2 Inst. 147. Hal. P. C. 65.

(*k*) 2 Hale, P. C. c. 57.

And it is further enacted,

“ A coroner ought also to inquire of treasure that is found, who were the finders, and likewise who is suspected thereof.”

And that may well be perceived where one liveth riotously, haunting taverns, and hath done so of long time ; hereupon he may be attached for this suspicion by four or six or more pledges, if he may be found (*l*).

It is also said a coroner may inquire of royal fishes, as sturgeons, whales, &c. (*m*).

With respect to Appeals for Felony.

The 59 Geo. 3, declaring that appeals of murder, treason, felony and other offences, and the manner of proceeding thereon, have been found oppressive, and the trial by battel in any suit a mode of trial unfit to be used, enacts that all such shall be abolished. It is therefore no longer necessary to enter into the practice formerly prevailing in the county-court upon bills of appeal.

Appeals for murder, treason, felony and other offences, as also trial by battel in any suit, abolished.
59 Geo. 3. c. 46.

Of traversing and quashing Inquisitions.

The law gives such credit to an inquisition of death found before the coroner, that anciently the judges would not receive a verdict acquitting a prisoner of the death of a man found against him by the coroner's inquest, unless the jury finding such acquittal had also found what other person did the fact, or by what other means the party came to his death, because it appeared by the coroner's view on record that a person was killed : a doctrine now exploded (*n*).

Refusal to take a verdict acquitting a prisoner, unless it be found who did the fact, now exploded.
13 Ed. 4. c. 3.
pl. 7.

It is at present commonly a business of form ; and if the fact be not known, the jurors usually say that it was done by persons unknown (*o*).

Also it has been formerly holden, that if a person were slain, and upon the coroner's inquest *super visum corporis*, it were found that *I. S.* fled, though *I. S.* were afterward acquitted both of the felony and flight, yet he forfeited his goods ; for the coroner's inquest is so solemn, that it is not traversable ; also, when the goods are once lawfully vested in the king by that inquest, the property

If a person were slain, and it were found that *I. S.* fled, he forfeited his goods ; but this law is exploded.

(*l*) Haw. C. P. 115.

(*m*) Staunf. P. C. 51.

(*n*) 2 Haw. P. C. c. 9. s. 33.

Staunf. 181.

(*o*) 2 Hal. P. C. 301.

in them cannot be divested (*p*). But *Hawkins* (*q*) says, this opinion is harsh and unreasonable, that a man shall be liable to forfeit all his goods, which may perhaps be all that he is worth, by an inquest *taken in his absence*, without either hearing him, or giving him an opportunity of defending himself.

Coroner's record of an abjuration, or of a confession of felony.

The coroner's record of an abjuration, or of the confession of breaking prison, or of the confession of a felony by an approver, estops the party not only traversing the confession, but also from alleging that it was taken from him by duress, &c. ; and it is said, that if the party plead that he is not the same person, he shall be concluded by the coroner's recording that he is the same person ; yet in these cases it seems that the judge may, in discretion, to inform his conscience, take an inquiry, "from the the people living next the place," of the whole circumstances of the matter (*r*).

Where the township cannot traverse the inquisition.

If it be found by a coroner's inquest that a murder was committed in such a town, and that the murderer escaped untaken, the township cannot traverse such escape, because it makes them only liable to an amercement, *et de minimis non curat lex* (*s*).

Also it is strongly holden in some books, that an inquest of self-murder, found before a coroner, cannot be traversed ; but the contrary opinion being also holden by books of as great authority, and seeming also to be more agreeable to the general tenor of the law in other cases, it seems to be the better opinion, that such inquest being moved into the King's Bench by *certiorari*, may be there traversed by the executor or administrator of the person deceased ; or in case the coroner's inquest find him to be a lunatic, by the king or the lord of the manor (*t*).

Return of depositions of *felo de se*.

The court will not oblige the coroner to return the deposition taken upon an inquisition of *felo de se*, if there be nothing depending before them to make it necessary (*u*).

Melius inquirendum.

If a coroner appear to have been corrupt in taking an inquest, it seems that a *melius inquirendum* shall go to special commissioners, who shall proceed not on view, but on testimony, and the coroner shall have nothing to

(*p*) 5 Co. 109. 2 Inst. 147.

(*q*) Vol. 2. c. 9. s. 54.

(*r*) 2 Haw. c. 9. s. 52, and authorities cited.

(*s*) 2 Haw. P. C. c. 9. s. 53.

(*t*) 2 Lev. 141. 2 Haw. P. C. c. 9. s. 55. Skin. 45. pl. 16. Bro.

Coro. 151. 2 Lev. 141. Freem. Rep. 443. pl. 608.

(*u*) 2 Str. 1073.

do with such inquest (*x*). But where his inquest is quashed for want of form only, he shall take a new one, in like manner as if he had taken none before (*y*).

If coroner's inquest be quashed.

The coroner's inquest found *A. felo de se*, his executors prayed that they might traverse it, which was granted by *Hale, Twisden and Wild, silente Rainsford*, for the coroner's inquest finding *felo de se* is traversable, though *fugam fecit* is not (*z*).

A verdict of *felo de se* is traversable, *fugam fecit* not.

The reason why an inquisition which finds a *fugam fecit* is not traversable, is, because all the parties that were present at the death of the party are bound to attend the coroner's inquest, and their not appearing there is a flying in law, and cannot be contradicted; but that reason does not hold in a *felo de se* (*a*).

The reason why *fugam fecit* is not traversable.

An inquisition before the coroner, taken *super visum corporis*, that finds the person was *felo de se, et non compos mentis*, may be traversed; but the *fugam fecit* cannot (*b*).

So *felo de se* and *non compos mentis*.

If a coroner take an inquisition *super visum corporis*, (as upon a *felo de se*), and that is sent into the King's Bench and quashed, the coroner may take a new inquisition *super visum corporis* (*c*). But upon a surmise, that the coroner ought to have found him *felo de se*, and hath not, there shall go no *melius inquirendum* directed to the sheriff. And *Hale* says, I have known it often denied, and it was held, it was within the restraint of the stat. 28 *Ed. 3*.

When coroner may take a new inquisition,

not upon a surmise only.

c. 9.

Where the Act of one Coroner shall be as effectual as if done by all.

Wherever coroners are authorized to act as judges, as in the taking of an inquisition of death, or receiving an appeal of felony, &c. the act of any one of them who first proceeds in the matter is of the same force as if all had joined in it (*d*); but it is said, that *after* such proceeding by any one of them, the act of any other will be void (*e*). Also it is certain, that where coroners are empowered to act only ministerially, as in the execution

(*x*) 3 Mod. 80. 100. 238. Salk. 190. Cro. Eliz. 371.

(*y*) 2 Roll. Abr. 32. pl. 5. Salk. 190.

(*z*) Rex v. Aldeham, 2 Lev. 152.

(*a*) Freem. 419. pl. 556.

(*b*) Vent. 278.

(*c*) 2 Hal. P. C. 59.

(*d*) 2 Hal. P. C. 56. cites Staunford, P. C. 53, a.

(*e*) 2 Hal. P. C. 59.

of a process directed to them, upon the default or incapacity of the sheriff, all their acts will be void wherein they do not all join (*f*).

One coroner may execute writ, but all must return.

One coroner may execute the writ, as in the case of an *exigent*: but if there be more coroners than one for the county, the return must be in the name of all (*g*).

Cannot take an inquisition by deputy.

The taking of an inquisition cannot be done by deputy, for by stat. 14 *E.* 1, the coroner is to view the body, and take the inquisition in his own person (*h*).

In the case of process to coroners upon disability of sheriff.

In the case of process to coroners, upon any disability in the sheriff, the sheriff is no longer considered as an officer of the court in that suit. And the coroners may do *all* such lawful acts as the sheriff himself might have done, and he may take the *posse comitatus* (*i*).

If sheriff be sued.

If the sheriff be sued, the writ is to be directed to the coroners.

If above two, and one die, the others may execute writ. But if one only survive.

If there be above two coroners in a county, and a writ be directed to the coroners, though one die, the others may execute; but if one only survive, he can neither execute nor return the writ till another be made (*k*).

Where sheriff and coroners are all challenged.

Where the sheriff and coroners of particular places and liberties have been all challenged, in all cases *elisors* have not been appointed, but *venires* have been directed to the sheriff of the county at large, to summon a jury from the next adjacent visne; and two *elisors*, at least, ought to be appointed (*l*).

The same challenges made to the sheriff may be made to coroners.

The same challenges that may be made to the sheriff may also be made to the coroners; in which case if *all* the coroners be challenged, the *venire* may then be awarded to *elisors*, who are always chosen and appointed by the court, by rule, to return the jury.

Of Fees that he may lawfully take.

c. 10.

By stat. *West.* 1. it is enacted,

No coroner to demand fee.

That no coroner demand any thing of any man to do his office, upon pain of great forfeiture to the king; which was made in affirmance of the common law (*m*).

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|---------------------------------------|--------|---|
| (<i>f</i>) Staunf. P. C. 53, a. | Hal. | (<i>i</i>) Hob. 85. |
| P. C. 58. | | (<i>k</i>) 2 Hal. P. C. 56. Cro. Jac. |
| (<i>g</i>) 2 Hal. P. C. 56. | | 383. F. N. B. 163. |
| (<i>h</i>) Cromp. Just. 227, a. | 2 Hal. | (<i>l</i>) Bendl. 23. Dy. 367. |
| P. C. 58. 60. Hawk. b. 2. c. 9. | | (<i>m</i>) 2 Inst. 176. |
| s. 24. R. v. Ferrand, 3 B & Ald. 260. | | |

But by 3 *H.* 7, it is enacted,

That a coroner have for his fee, upon every inquisition taken upon the *view* of a body slain, 13 *s.* 4 *d.* of "the goods and chattels of the slayer or murderer," if he have any goods; and if he have no goods, of such amercements as shall fortune any township to be amerced for the escape of the murderer, &c.

But coroners endeavouring to extend this statute to persons slain by *misadventure*, it was enacted by 1 *H.* 8.

That upon a request made to a coroner to come and inquire upon the view of any person slain, drowned or otherwise dead by misfortune, the said coroner shall diligently do his office, without taking any thing therefor, upon pain to every coroner that will not endeavour himself to do his office (as aforesaid), or that taketh any thing for doing his office, upon every person dead by misadventure, for every time 40 *s.*

To the intent, however, that coroners may be encouraged to execute their office with diligence and integrity, it is enacted, by stat. 25 *Geo.* 2.

That for every inquisition, not taken upon the view of a body dying in a gaol or prison, which shall be duly taken in *England* by any coroner in any township or place contributing to the rates directed to be levied by 12 *Geo.* 2, c. 29, he shall have 20 *s.*, and for every mile which he or they shall be compelled to travel from the usual place of his or their abode, to take such inquisition, the further sum of nine-pence, over and above the said sum of 20 *s.*, shall be paid to him or them, out of the monies arising from the rates before mentioned, by order of the justices of the peace in their general or quarter sessions assembled, for the county, &c. where such inquisition shall have been taken, or the major part of them; and which order the said justices, or the major part, are authorized and directed to make, for which no fee or reward shall be paid to the clerk of the peace or any other officer.

Under this act, a coroner can only charge for every mile from the place of his abode to take the inquest, and not for those he travels in returning (*n*).

He is not entitled to separate allowances under 25 *Geo.* 2, c. 29. s. 1. when he holds several inquests on the same day (*o*).

c. 1.

Coroner may now take fee on inquisition taken on view of person slain. 3 *H.* 7. c. 1.

c. 7.

On request made to coroner to inquire on view of body, he shall do his office without fee.

c. 29.

Fees and expenses allowed to coroners.

(*n*) R. v. Oxfords. Just. 2 B. & Ald. 203.

(*o*) R. v. Warwick Justices, 5 B. & Cr. 430.

Inquisition
taken on view
of body in gaol
or prison.

25 G. 2, c. 29.
s. 2.

That for every inquisition which shall be duly taken upon the view of a body dying in any gaol or prison in *England*, by any coroner of a county, so much money, not exceeding the sum of 20 s., shall be paid to him or them, as the justices of the peace in their general or quarter sessions assembled, for the county, riding or division wherein such gaol or prison is situate, or the major part of them, shall think fit to allow as a recompense for his or their labour, pains and charges, in taking such inquisition, to be paid in like manner, by order of the said justices, or the major part of them, out of the monies as aforesaid, and for which order no fee or reward shall be paid to the clerk of the peace or any other officer.

Provided.

s. 3.

Provided, that over and above the recompense hereby limited and appointed for inquisitions taken as aforesaid, the coroner who shall take an inquisition upon the view of the body slain or murdered shall also have the fee of 13 s. 4 d. payable by 3 H. 7, out of the goods and chattels of the slayer, or out of the amercement imposed upon the township, if the slayer and murderer escape.

s. 4.

Provided, that no coroner to whom any benefit is given by this act shall by colour of this office, or upon any pretext whatsoever, take for his office doing, in case of the death of any person, any fee or reward other than the said fee of 13 s. 4 d. limited as is aforesaid by the said act 3 H. 7, and other than the recompense hereby limited and appointed, upon pain of being guilty of extortion.

To avoid a presentment being made that the parish has not made hue and cry pursuant to the statute, the constable or parish officers generally pay the fee of 13 s. 4 d. upon the finding of the jury of a flight, and no goods; without a finding of a neglect of hue and cry; which is a saving to parishes (p).

Coroners of the
king's house-
hold, &c. not
entitled to the
benefit of this
act, but to have
only their old
fees.
s. 5.

Provided, that no coroner of the king's household, and of the verge of the king's palaces; nor any coroner of the admiralty; nor of the county palatine of *Durham*; nor of the city of *London* and borough of *Southwark*, nor any of the franchises belonging to the said city; nor any coroner of any city, borough, liberty or franchise, which is not contributing to the rates directed by 12 Geo. 2, c. 29, or within which such rates have not been usually assessed, shall be entitled to any fee, recompense or benefit given to or provided for coroners by this act; but they shall have such fee and salaries as they were allowed before this act, or as shall be allowed by the persons by whom they have been appointed.

(p) Umfrev. 261, in note.

The coroners of franchises who do not contribute to the county-rates are not entitled to the fees given by stat. 25 *Geo. 2.* or to any fees to be paid by the county (*q*).

Coroners not contributing to county-rates not to have fees. c. 29.

If the coroner request the sessions to make an order for his fees, and they refuse, he may apply for a *mandamus*; but he must allege in the writ all those facts which are necessary to show that he was entitled to the relief prayed, and that he had a right to call on the magistrates to do that, for their non-performance of which he sued out this compulsory writ.

As to the application to the sessions for his fees.

A *mandamus* to the justices in sessions, to allow an item charged in the coroner's account, for an inquisition, was refused, because the justices thought the inquisition unnecessary, and the court saw no reason to interfere with their opinion (*r*).

Mandamus refused where inquisition appeared unnecessary.

By stat. 1 *H. 8.* justices of assize and justices of peace, within the county, have power to inquire of and punish the defaults of coroners.

Justices may punish coroners for extortion. c. 7. s. 2.

Of discharging the Coroner, and for what Misdemeanors punished.

If any coroner be so far engaged in any other public business in the county that he cannot have leisure enough to attend his office of a coroner; or if he be chosen verderor of a forest; or if he have not sufficient lands in the same county whereon to live according to his state and degree (*s*); or if he be disabled, either by *old age* or any inveterate disease, as the palsy or the like, to execute his office as he ought; and, as some say, if he follow any common trade, he may be discharged by the writ *de coronatore exonerando*, which, being directed to the sheriff, after a recital of the particular cause of the discharge of such coroner, commands him to cause another to be chosen in his room (*t*).

By choosing another, the power and authority of the first *ipso facto* ceases.

As it is an office of freehold, the Court of *Chancery* will not suffer this writ to issue but on affidavit that the "coroner, intending to be removed, hath been served "with notice of the petition for it" (*u*).

Court will not suffer writ to issue for removal without notice.

(*q*) *R. v. York West. R. Just.*
7 *T. R.* 52.

(*t*) *F. N. B.* 163. *Staunf. P. C.*
48. 2 *Inst.* 32.

(*r*) 11 *East*, 229.

(*u*) 3 *Atk.* 184.

(*s*) 3 *Rep.* 41.

May be removed for reasonable cause.

As coroners may be elected by writ *de coronatore eligendo*, so they may be removed for reasonable cause, and new ones chosen in their room by writ. And although that cause be not traversable (*x*), yet if it be false, he may have a *supersedeas* to that writ (*y*).

If writ for removal be grounded on false suggestion.

If the writ *de coronatore exonerando* be grounded on an untrue suggestion, the coroner may procure a commission from the *Chancery* to inquire of the truth of it, and to return the inquiry before the king into *Chancery*; and if upon such commission the suggestion be disproved, the king may make a *supersedeas* to the sheriff that he do not remove such coroner, or if he have removed him, that he suffer him to execute the office as he did before (*z*).

If remiss in his office.

If a coroner be remiss in coming to do his office when he is sent for, &c. he shall be amerced, by virtue of the *stat. de coronatoribus* (*a*). If he return a wrong presentment, an information will be granted against him (*b*). So if he impose an improper inquisition upon the jury, he will be committed (*c*).

If he return a wrong presentment.

c. 1.

By stat. 3 *H. 7*,

If he make no inquisition.

If any coroner be remiss, and make not inquisition upon the view of the body slain or murdered, he shall forfeit for every default 100*s*.

c. 7.

And by 1 *H. 8*, it is enacted,

Misadventure.

That if any coroner shall not endeavour himself to do his office, upon any person dead by misadventure, he shall forfeit 40*s*.

c. 1.

Also by 3 *H. 7*, it is enacted,

Not certifying.

That if any coroner do *not* certify his inquisition, he shall forfeit 100*s*.

He is to return his inquisition at the next gaol delivery; and because he did not, court discharged him, and set a fine of 100*l*. (*d*).

c. 29.

By stat. 25 *Geo. 2*,

Coroner convicted of misdemeanor in his office.

If any coroner who is not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of extortion, or wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court before whom he

(*x*) 5 Co. Rep. 58, b.

(*a*) Salk. 377.

(*y*) F. N. B. 163. 2 Hal. P. C. 56.

(*b*) Comb. 386.

(*z*) Register, 117, b. Staunf. P. C.

(*c*) 1 Str. 69.

49. F. N. B. 164; and *ex parte* Parnell, 1 J. & Walk. C. R. 451.

(*d*) Rex v. Ld. Buckhurst, Keb. 208. pl. 81.

shall be so committed to adjudge that he shall be amoved from his office ; and thereupon, if such coroner shall have been elected by the freeholders of any county, a writ shall issue for the amoving him from his office, and electing another coroner in his stead, in such manner as writs for the amoval or discharge of coroners, and for electing coroners in their stead, are in any cases already directed by law ; and if the coroner so convicted shall have been appointed by the lord or lords of any liberty or franchise, or in any other manner than by the election of the freeholders of any county, the lord or lords of such liberty or franchise, or the person or persons entitled to the nomination or appointment of any such coroner, shall, upon notice of such judgment of amoval, nominate and appoint another person to be coroner in his stead.

Court may move him from office.

If coroner so convicted be appointed by a lord of franchise, &c. they shall appoint a new one.
s 6.

This statute is only in furtherance of the powers which before existed for their removal.

Neglect means not merely wilful neglect, as where one coroner gets another to perform the office for him, by which the latter is called out of his own district, and the inhabitants of one district may be thereby deprived of their coroner.

Confinement in prison for twelve months held a sufficient ground for removal, though the duties had been performed by another coroner for him during his absence (*e*).

So by his removal into an inconvenient part of the kingdom.

The practice is to issue both the writ *de coronatore exonerando*, and that *de coronatore eligendo* at the same time, though the former must be executed first ; and no notice need be given of the issuing the writ to the party removed. He may have a commission to inquire whether the cause assigned for his removal be true, but he cannot traverse it (*f*).

Of sudden violent deaths which are all within the Coroner's Office to inquire, and Inquisitions.

Sudden violent deaths are of these kinds : 1. *By the visitation of God* : 2. *By misfortune*, where no other had a hand in it ; as if a man fall from a horse or cart : 3. *By his own hand*, as *felo de se* : 4. *By the hand of another man*, where the offender is not known. 5. *By the hand*

Of sudden deaths.

(*e*) *Ex parte* Parnell, 1 Jac. & Walk. Rep. 451.

(*f*) *Ib.* 451. Reg. 1176. Staunf. P. C. 49. F. N. B. 164.

of another, where he is known, whether by murder, manslaughter, *se defendendo*, or *per infortunium* (g).

In private families.

Coroners are not to obtrude themselves into private families, where there is no pretence for supposing that the deceased died otherwise than by a natural death (h).

Dying suddenly.

1. The dying suddenly is *not* to be understood of a fever, apoplexy, or other visitation of God, for then the coroner might be sent for in every case (i).

By visitation of God.

If the inquisition find that he died *by the visitation of God*, there is no more to be done, only the inquisition, together with the examinations, are to be returned to the next gaol delivery.

3 H. 7. c. 1.

If inquisition find *per infortunium*.

2. If the inquest find the death *per infortunium* simply, as a *fall*, &c. then the coroner is to take the examination, and return the same, with the inquisition, *to the next gaol delivery*, and to inquire of the *deodand*, and the value, and in whose hands, and to seize and deliver the same to the township, to be answerable for the same to the king.

4 Ed. 1.

But if drowned.

But if the person were *drowned* in a *pit*, the coroner shall command the vill to stop it; and if it be not done, the *vill* shall be amerced in *eyre*, or before justices of gaol delivery (k).

In no case can the coroner set fine.

In no case can the coroner set any fine or amercement, as for non-appearance of juries or constables, escapes of townships, &c. but presents it to the next gaol delivery, and they impose the fine (l).

If inquest find a man *felo de se*, what they ought also to find.

3. If the inquest find a man *felo de se*, who is one that puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as, if attempting to kill another, he runs upon his antagonist's sword; or, shooting at another, the gun bursts and kills himself (m); they ought to find the *special matter*, and also what goods and chattels he had, of what value, and seize and deliver the same to the township, to be answerable to the king or his almoner, or the lord of the franchise to whom they belong, and shall bind over the first finder of the body to the next gaol delivery (n).

If party be slain, and felon not known.

4. If the party be slain, and the felon is *not known*, they are to find their inquisition accordingly, and shall bind

(g) 2 Hal. P. C. 62.

(h) 11 East, 231.

(i) Umfr. 208.

(k) 8 E. 2. Coron. 416.

(l) 2 Hal. P. C. 62.

(m) 1 Haw. P. C. 68. 4 Black. Com. 189.

(n) 2 Hal. P. C. 62.

over the first finder of the body to the next gaol delivery, and return his examinations, together with his inquisition (*o*). 1 & 2 P. & M. c. 13.

5. But if the person was slain, and the party that did it was known, and the inquisition found himself guilty of the death, or that he died by his hand, there were these proceedings: namely, But if he was slain and person known.

The inquest were also to inquire of all that were *present*, *aiding* and *abetting*.

They shall also inquire of all accessories *before the fact*; but they cannot inquire of *accessories after*.

If they find him guilty as *principal* or *accessory before the fact*, they are also to inquire whether *he fled* for the same: if the inquisition find that he fled, it is a forfeiture of his goods: but they cannot be seized before he be convicted of the felony (*p*). If guilty as principal or accessory.
1 R. 3. c. 3.

If the persons that are found guilty by the inquest be taken, the coroner may and must commit them to the sheriff, and he is to send them to the gaol; but if they be not found, he is not to proceed to *outlawry*, but return his inquisition to the next gaol delivery, and the justices of gaol delivery are to proceed against the offenders, if in gaol; if not, then to certify the inquisition into the K. B., and there process of outlawry to go against them, upon that inquisition (*q*). If persons be found guilty, coroner to commit, &c. if not found, to certify the inquisition.
4 Ed. 1.
3 H. 7. c. 1.

By 7 *Geo. 4.* it is enacted, c. 64. s. 4.

“That every coroner upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine or great sessions, at which the trial is to be, then and there to prosecute, or give evidence against the party charged, and every such coroner shall certify and subscribe the same evidence and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, at the opening of the court.”

(*o*) 2 Hal. P. C. 63.

(*p*) Ib.

(*q*) Ib. 64.

s. 5.

s. 6.

Bail.

Coroners offending against the act may be fined by the court as it shall think fit: and the provisions declared to apply to coroners, not only of counties at large, but of all other jurisdictions.

Upon the depositions removed by *certiorari* to the coroner, the court allowed bail for manslaughter to be put in before a magistrate: the rule to show cause being served on the coroner and the next of kin (*r*).

OF CRIMES.

1. *Felonia de se*;

What is *felo de se*.

Or suicide, is where a man, of the age of discretion, and *compos mentis*, kills himself, by stabbing, poison, or any other way (*s*).

If he lose memory, &c. not *felo de se*.

If he lose his memory by sickness, infirmity or accident, and kills himself, he is *not felo de se*; neither can he be said to commit murder upon himself or any other.

If he gives a mortal stroke while *non compos*.

If a man gives himself a mortal stroke while he is *non compos mentis*, and recovers his understanding, and then dies, he is not *felo de se*; for though the death complete the homicide, the act must be that which makes the offence.

Not every melancholy distemper makes *non compos*.

It is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind that renders them to be madmen or frantic, or destitute of the use of reason. A lunatic killing himself in the fit of lunacy is not *felo de se*: but if he kills himself in a lucid interval, he is a *felo de se* (*t*).

If death within year and day.

If a man voluntarily give himself a mortal wound, and die within a year and a day of that wound, he is *felo de se*, and he cannot purge the crime nor the forfeiture inflicted by the law by his repenting what he had done (*u*).

It must be voluntarily, and with an intent.

It must be *simply voluntary*, and with an intent to kill himself. If A., to prevent a *gangrene* beginning in his hand, doth, without any advice, *cut off his hand*, by which he dies, he is not thereby *felo de se*; for though it was a voluntary act, yet it was not with an intent to kill himself (*x*).

(*r*) B. v. Jones, 1 B. & Ald. 209.

(*s*) 1 Hal. P. C. 411.

(*t*) Ib. 412.

(*u*) 1 Hal. P. C. 411. cites 8 E. 4. 4.

(*x*) 1 Hal. P. C. 412.

The forfeiture of *felo de se* is of goods and chattels only (*y*). Forfeiture of *felo de se*.

He was formerly to be buried in the highway, with a stake driven through his body (*z*). But now, by 4 *Geo.* 4, he shall be interred privately in burial ground within twenty-four hours after the finding of the inquisition, and between the hours of nine and twelve at night, without any performance of the rites of Christian burial. c. 52.

If an idiot, or an infant under 14, or lunatic during his lunacy, or if one distracted or losing his memory, through sickness, grief, infirmity, or other accident, kill himself, it is not felony; such a one can incur no forfeiture; for though death complete the homicide, the act must be that which makes the offence (*a*). Idiot, or infant, or lunatic.

2. *Petit Treason.*

Petit treason, according the statute, may happen three ways: 1. By a servant killing his master: 2. A wife her husband: 3. Or an ecclesiastical person (either secular or regular) his superior, to whom he owes faith and obedience. Petit treason.
25 Ed. 3. c. 2.

The killing of a master or husband is not *petit treason* unless it be such a killing as in case of another person would be murder; and therefore upon an indictment of *petit treason* for a servant killing his master, if, upon the circumstances of the case, the killing appear to be upon a sudden falling out, and the servant upon a sudden provocation kill his master, which, in case it had been between other persons, had been only manslaughter, the jury may acquit him of *petit treason*, and find him guilty of manslaughter (*b*). Killing of a master or husband.

Aiders, abettors and procurers are within the act, where the offence is *petit treason* in the principal: but in all these cases, if the killing be of a sudden falling out, or a *se defendendo*, &c. it is not *petit treason* (*c*). Aiders, &c.
Killing suddenly.

Killing the wife of the master is within the statute, for he is servant to both (*d*). Killing wife of master.

A clergyman is understood to owe canonical obedience to the bishop who ordained him, to him in whose diocese he is beneficed, and also to the metropolitan of such suffragan, or diocesan bishop: therefore to kill any of these is *petit treason* (*e*). Clergyman.

(*y*) 1 Hal. P. C. 413. 3 Inst. 55. (*b*) 1 Hal. P. C. 378.
4 Black Com. 199. (*c*) Crompt. 19, 20.
(*z*) 4 Bl. Com. 190. (*d*) Plow. 86, b.
(*a*) 1 Hal. P. C. 30. (*e*) 1 Hal. P. C. 33.

Commanding
a stranger to
beat husband,
master, &c.

Commanding a stranger to beat the husband, master or superior, and the stranger, in his or her presence, doth accordingly beat him, of which he dies, this is petit treason in the wife, servant or ecclesiastic, and murder in the stranger (*f*).

3. Of Murder.

Murder, what.

Murder is defined to be, when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with *malice aforethought*, either *express* or *implied* (*g*).

Homicide.

Homicide comprehends murder, manslaughter, death by chance, *se defendendo*, or for justifiable cause (*h*).

Lunatics,
infants.

It must be committed by a person of sound memory and discretion: for lunatics or infants are incapable of committing any crime, unless in such cases where they show a consciousness of doing wrong, and of course a discretion, or discernment, between good and evil.

Next, it happens when a person of such sound discretion unlawfully killeth. The unlawfulness arises from the killing without warrant or excuse: and there must be an actual killing to constitute murder (*i*).

By poisoning,
&c.

It may be by poisoning, striking, starving or drowning, and a thousand other forms of death by which human nature may be overcome.

Alien, Jew, &c.

To kill an alien, a Jew, or an outlaw, who are all under the king's peace or protection, is as much murder as to kill the most regular-born Englishman (except he be an alien in time of war (*k*).

Though he be denizen, attainted of high treason, or felony, or abjured or convicted, and under execution for another crime (*l*).

Bastards.

As to killing bastard children, see 21 *Jac.* 1. c. 27, and as to the punishment of concealing the birth, 9 *Geo.* 4. c. 31. s. 14.

To kill a child in the womb is not murder (*m*).

Killing must be
with malice.

The killing must be committed with malice aforethought to make it the crime of murder, which may be either express or implied in law (*n*).

(*f*) 1 Hale, 380. Plowd. 475.
Crompt. 20, b.

(*g*) 3 Inst. 47.

(*h*) Hal. P. C. 43.

(*i*) 1 Hale, 425.

(*k*) 3 Inst. 50.

(*l*) 3 Inst. 50. 3 Mod. 68.

(*m*) 3 Inst. 150. Hale, 53.

(*n*) Fost. C. L. 266.

Malice aforethought is, when the fact is attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit, or an action flowing from a wicked and corrupt motive; a thing done *malo animo, malâ conscientiâ* (o). Malice aforethought.

Express, when one with a sedate deliberate mind, and formed design, doth kill another: which formed design is evidenced with external circumstances discovering that inward intention: as, lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm (p). This takes in the case of deliberate duelling, where both parties meet with an intent to murder, and therefore the law has justly fixed the crime and punishment of murder on them, and on their seconds also (q). Murder express. Duelling.

If upon a sudden provocation one beats another in a cruel and unusual manner, so that he dies, though he did not intend his death, yet he is guilty of murder, by express malice (r). Sudden provocation.

Neither shall he be guilty of a less crime who kills another in consequence of such a wilful act as shows him to be an enemy to all mankind in general, as going deliberately and with an intent to do mischief(s), upon a horse used to strike, or coolly discharging a gun among a multitude of people (t). So if a man resolves to kill the next man he meets, and does kill him, it is murder, although he knew him not, for this is universal malice. And if two or more come together to do an unlawful act against the king's peace, of which the probable consequence might be bloodshed; as, to beat a man, to commit a riot, or to rob a park; and one of them kills a man; it is murder in all, because of the unlawful act (u). Going with a horse used to strike. Gun. Resolves to kill the next man he meets. To do an unlawful act.

4. Of Implied Malice.

Also in many cases where no malice is expressed, the law will imply it; as where a man wilfully poisons another: in such a deliberate act, the law presumes malice, though no particular enmity can be proved (x). And if a man kills another suddenly, without any, or without a considerable provocation, the law implies malice. Implied malice. Killing suddenly.

(o) Fost. C. L. 256.

(p) 1 Hal. P. C. 451.

(q) 1 Haw. P. C. 82. Hale, 48.

(r) 2 Hal. P. C. 451. 473, 474.

(s) Id. Ray. 143.

(t) 1 Hawk. P. C. 71.

(u) Haw. 84.

(x) 1 Hale, 455.

No affront
by word or
gesture is a
sufficient pro-
vocation.

Officer of
justice,

or private
person, &c.

No affront by words or gestures only is a sufficient provocation, so as to excuse or extenuate such acts of violence as manifestly endanger the life of another (*y*). But if the person so provoked had unfortunately killed the other, by beating him in such a manner as showed only an intent to chastise and not to kill him, the law so far considers the provocation of contumelious behaviour as to adjudge it only manslaughter, and not murder (*z*).

In like manner if one man kills an officer of justice, either civil or criminal, in the execution of his duty, or any of his assistants endeavouring to conserve the peace, or any private person endeavouring to suppress an affray or apprehend a felon, knowing his authority or the intention with which he interposes, the law will imply malice, and the killer shall be guilty of murder (*a*).

It were endless to go through all the cases of homicide; these, therefore, may suffice as a specimen. And take it for a general rule, that all homicide is malicious, and of course amounts to murder, unless it were justified by the command or permission of the law, excused on a principle of accident or self-preservation, or alleviated into manslaughter by being either the involuntary consequence of some act not strictly lawful, or (if voluntary) occasioned by some sudden and sufficiently violent provocation. And all these circumstances of justification, excuse or alleviation, it is incumbent upon the prisoner to make out to the satisfaction of the court and jury; the latter of whom are to decide whether the circumstances alleged are proved to have actually existed: the former, how far they extend to take away or mitigate the guilt. For all homicide is presumed to be malicious, until the contrary appeareth upon evidence (*b*).

If owner let
an ox or horse
loose.

If the owner of a horse, or an ox, let him loose to frighten people, and make sport, and the beast kill a man, it is murder in the owner (*c*).

5. Of Manslaughter.

Manslaughter.

Manslaughter is defined, unlawful killing of another without malice, either express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act (*d*).

(*y*) 2 Haw. 82.

(*z*) Fost. Cr. L. 291.

(*a*) 1 Hale, 157.

(*b*) 1 Hale, 430.

(*c*) Ib. 431.

(*d*) 1 Hal. P. C. 466.

The distinction between murder and manslaughter may be found in the Mosaic law. And therefore, where a man kills another upon a reasonable provocation given, it will only be manslaughter.

As to the first, or voluntary branch: if upon a sudden two persons fight, and one of them kills the other, this is manslaughter; and so it is, if they upon such an occasion go out and fight in a field, for this is one continued act of passion (*e*). And the law pays that regard to human frailty as not to put a hasty and deliberate act upon the same footing with regard to guilt.

If two persons on a sudden fight, and if one kills.
Fight in a field.

So also if a man be greatly provoked, as by pulling his nose, or other great indignity, and immediately kills the aggressor, though this is not excusable *se defendendo*, since there is no absolute necessity for doing it to preserve himself, yet neither is it murder, for there is no previous malice; but it is manslaughter (*f*).

Provoked by pulling nose.

But in this and in every other case of homicide upon provocation, if there be a sufficient cooling time for passion to subside, and reason to interpose, and the person so provoked afterward kills the other, this is deliberate revenge, and no heat of blood, and accordingly amounts to murder (*g*).

Cooling of the passion.

So if a man takes another in actual adultery with his wife, and kills him directly upon the spot, it is not absolutely ranked in the class of justifiable homicide, as in the case of a forcible rape, but it is manslaughter (*h*) in the lowest degree of it; and in such case the court directed the burning in the hand to be gently inflicted (*i*), because there could not be a greater provocation.

If in adultery with wife.

Manslaughter, therefore, on a sudden provocation, differs from excusable homicide *se defendendo*, in this, that in one case there is an apparent necessity, for self-preservation, to kill the aggressor; in the other no necessity at all, being only a sudden act of revenge.

Manslaughter, differs from excusable homicide.

The second branch, or involuntary manslaughter, differs also from homicide excusable by misadventure, in this, that misadventure always happens in consequence of a lawful act, but this species of manslaughter in consequence of an unlawful one; as, if two persons play at

Involuntary manslaughter differs from homicide excusable by misadventure.

(*e*) 1 Haw. 82.
(*f*) Kelynge, 135.
(*g*) Fost. Cr. Law, 296.

(*h*) 1 Hal. P. C. 486.
(*i*) T. Ray. 212.

If an act done
lawful in itself
but in an un-
lawful manner.

If in London.

Involuntary
killing happens
in consequence
of an unlawful
act.

sword and buckler, unless by the king's command, and one of them kills the other, this is manslaughter; because the original act was unlawful: but it is not murder, for the one had no intent to do the other any personal mischief (*k*). So where a person does an act lawful in itself, but in an unlawful manner, and without due caution and circumspection; as when a workman flings down a stone or piece of timber into the street, and kills a man, this may be either misadventure, manslaughter or murder, according to the circumstances under which the original act was done; if it were in a country village, where few passengers are, and he calls out to all people to have a care, it is misadventure only; but if it were in *London*, or other populous town, where people are continually passing, it is manslaughter, though he gives loud warning (*l*), and murder, if he knows of their passing, and gives no warning at all; for then it is malice against all mankind (*m*). And, in general, when an involuntary killing happens in consequence of an unlawful act, it will be either *murder* or *manslaughter*, according to the nature of the act which occasioned it. If it be in prosecution of a felonious intent, or in its consequences naturally tended to bloodshed, it will be murder; but if no more was intended than a mere *civil trespass*, it will only amount to manslaughter (*n*).

6. Of Homicide on Stat. 1 Jac. 1. c. 8.

Stabbing
another.

s. 8.

But there is one species of manslaughter which is punished as murder, the offence of mortally stabbing another, though done upon sudden provocation. For by stat. 1 Jac. 1. when one thrusts or stabs another not then having a weapon drawn, or who hath not then *first* stricken the party stabbing, so that he dies thereof *within six months* after, the offender shall not have the benefit of clergy, though he did it not of malice aforethought (*o*).

Stat. construed
favourably.

The benignity of the law has construed the statute so favourably on behalf of the subject, and so strictly when against him, that the offence of stabbing now stands almost upon the same footing as it did at the common law (*p*). Thus, upon the construction of this statute, it

(*k*) 3 Inst. 56.

(*l*) Kel. 40.

(*m*) 3 Inst. 57.

(*n*) Fost. 258. 1 Haw. P. C. 81.

(*o*) Foster, 300. And see now

9 Geo. 4. c. 31.

(*p*) Ib. 299.

has been doubted whether, if the deceased had struck at all before the mortal blow given, this does not take it out of the statute, though in the preceding quarrel the stabber had given the first blow; and it seems to be the better opinion that this is not within the statute (*q*). Also it hath been resolved, that the killing a man by throwing a hammer, or other weapon, is not within the statute: and whether a shot with a pistol be so or not is doubted (*r*). But if the party slain had a cudgel in his hand, and had thrown a pot or a bottle, or discharged a pistol, at the party stabbing, this is a sufficient having a weapon drawn on his side within the words of the statute (*s*).

A husband stabbing an adulterer is not within the act; nor a man assaulted by thieves in his house; nor if one concealed in a closet, but no thief, is stabbed, on a sudden outcry of thieves in the night-time (*t*).

Excusable homicide is of two sorts, either *per infortunium* by misadventure, or *se defendendo*.

7. *Homicide per infortunium.*

Homicide *per infortunium* or *misadventure* is, where a man, doing a lawful act, *without* any *intention* of hurt, unfortunately kills another; as where a man is at work with a hatchet, and the head thereof flies off and kills a stander-by; or where a person, qualified to keep a gun, is shooting at a mark, and undesignedly kills a man (*u*); for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting his child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only *misadventure*; for the act of correction was lawful: but if he exceeds the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensues, it is manslaughter at least, and in some cases (according to circumstances) murder; for the act of *immoderate* correction is unlawful (*x*). To whip another's horse, whereby he runs over a child and kills him, is held to be accidental in the rider, for he has done nothing unlawful, but manslaughter in the person who whipped him (*y*).

Homicide *per infortunium* or misadventure.

Parent correcting a child, master, &c.

Moderate correction.

(*q*) Foster, 301. 2 Haw. 77.

(*u*) 1 Haw. 73, 74.

(*r*) 1 Hal. P. C. 470. Fost. 300.

(*x*) 1 Hal. P. C. 473, 474.

(*s*) 1 Haw. 77.

(*y*) 1 Haw. 73.

(*t*) Fost. 298.

Idle, dangerous and unlawful sport.
Cock-throwing.

In general, if death ensues in consequence of an idle, dangerous and unlawful sport, as shooting or casting stones in a town, or cock-throwing; in these and similar cases the slayer is guilty of manslaughter, and not misadventure only, for these are unlawful acts (*y*).

8. *Homicide se defendendo*.

Chance-medley.

Homicide in self-defence, or *se defendendo*, upon a sudden affray, is also excusable, rather than justifiable. This species of self-defence must be distinguished from that just now mentioned, as calculated to the perpetration of a capital crime, which is not only matter of excuse, but of justification. But the self-defence we are now speaking of is that whereby a man may protect himself from an assault, or the like, in the course of a sudden brawl or quarrel, by killing him who assaults him. And this is what the law expresses by the word chance-medley, or, as some write, *chaud-medley*; the former of which signifies a casual affray, the latter an affray in the heat of blood or passion; both of them pretty much of the same import; but the former is in common speech too often erroneously applied to any manner of homicide by misadventure; whereas it appears that it is properly applied to such a killing as happens in self-defence upon a sudden rencounter (*a*).

24 H. 8. c. 5.

To excuse homicide upon the plea of self-defence it must appear that the slayer had no other possible means of escaping from his assailant.

Homicide is excusable when done upon inevitable necessity, as for one's own defence; for if a man be assaulted, and retreats to a wall, and then in his defence kills the pursuer, it is not murder nor manslaughter (*b*).

If a man strikes the assailant before retreat, and then kills him in his own defence, this is manslaughter (*c*).

9. *Chance-Medley and Manslaughter*.

The true criterion between chance-medley and manslaughter is this: when both parties are actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer hath not

(*z*) 1 Haw. 74. (b) Hal. P. C. 41. 2 Inst. 315
(a) 3 Inst. 55. 57. Foster, 3 Inst. 56.
275. (c) Hal. P. C. 42.

begun to fight, or (having begun) endeavours to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide excusable by self-defence (*d*).

It is only an act *malum in se*, not barely *malum prohibitum*, that prevents the death being chance-medley; thus, an unqualified person shooting at game falls under the same rule as if qualified (*e*).

And as the manner of defence, so is the time to be considered; for if the person assaulted does not fall upon the aggressor till the affray is over, or when he is running away, this is revenge, and not defence.

As the manner of defence, so is the time.

If two persons, *A.* and *B.*, agree to fight a duel, and *A.* gives the first onset, and *B.* retreats as far as he can, and then kills *A.*, this is murder (*f*). But if *A.*, upon a sudden quarrel, assaults *B.* first, and upon *B.*'s returning the assault, *A.* really and *bonâ fide* flies, and, being driven to the wall, turns again upon *B.* and kills him, this may be *se defendendo* (*g*), though others have thought this opinion too favourable (*h*).

Duel.

Sudden quarrel.

Under this excuse of self-defence the principal civil and natural relations are comprehended; therefore master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused; the act of the relation assisting being construed the same as the act of the party himself (*i*).

Master and servant, parent and child.

If death ensues from an accident, happening at innocent and allowable recreations, as cudgels, foils, wrestling, engaged in by mutual consent of friendship, for trial of skill or manhood, or improvement in the use of weapons, it is *chance-medley* (*k*).

Death by accident, or innocent recreations.

This extends not to prize-fighting, or public boxing-matches for lucre; nor to throwing at cocks (*l*).

Extends not to prize-fighting.

10. *Accidental Death.*

If a man driving a cart, &c. kills, and he saw the danger, it is murder; if he did not, through heedlessness, it is manslaughter; if he took all due care, it is accidental death (*m*).

Driving a cart.

(*d*) Foster, 277.

(*i*) 1 Hale, 484.

(*e*) Ib. 259.

(*k*) Foster, 259.

(*f*) 1 Hal. P. C. 479.

(*l*) Ib. 260.

(*g*) Ib. 482.

(*m*) Ib. 263.

(*h*) 1 Haw. 75.

If a man finds
a pistol.

If a man finds a pistol, tries it with a rammer, and thinks it unloaded, carries it home, shows it his wife, touches the trigger, it goes off, and kills her, ruled manslaughter; yet ought to have been only accidental death.

Death ensuing
on an act un-
lawful.

Death ensuing upon an act unlawful cannot be accidental; but if done deliberately, and with intention of mischief, murder; if heedlessly, manslaughter (*n*), as if a workman, throwing rubbish out of a house, kills, if he gave warning, it is only accidental death; if not, manslaughter at least. And if in *London*, or populous towns, such warning not sufficient, unless early, and when few people are stirring (*o*).

Workman
throwing rub-
bish off a house.

11. *Of Killing an Officer of Justice.*

When an officer is killed in the *execution* of his office it is murder, as a watchmen, a constable (*p*), serjeant, or magistrate, or any in their assistance, though not on the spot, but coming or going (*q*). But the officer should be known, or notify with what intent he comes, by commanding the peace. If he arrests on process he should give notice of his authority (*r*).

But if the officer does what is not warrantable, it is only manslaughter (*s*).

Persons having authority to arrest or imprison, using the proper means for that purpose, and being killed in the struggle, it is murder in all who take a part in such resistance, and this will hold in all cases whether civil or criminal. So in case of breach of the peace, or any misdemeanor short of felony (*t*).

12. *If Officer exceeds his Jurisdiction.*

When an officer of justice exceeds the limits of his jurisdiction in the death of another, it is murder (*u*).

Gaoler.

If a gaoler carries his prisoner against his will, whom he knows has never had the small pox, but fears it, to a place where he knows a person having it is, and the prisoner catches it, and dies, it is murder (*v*).

(*n*) Forster, 260.

(*o*) Ib. 262, 263.

(*p*) Hal. 45. 3 Inst. 52.

(*q*) Foster, 308.

(*r*) Ib. 310, 311.

(*s*) Mar. 4.

(*t*) Foster, 270.

(*u*) Hal. P. C. 35.

(*v*) Str. 854.

If a gaoler (as warden) has a lawful deputy, whose Deputy gaoler. servant, by duress, (of confining in an unwholesome room,) kills his prisoner, it is not murder in the principal ; but it is murder in the servant (*x*).

If defendant in a civil suit, fearing arrest, flies, officer pursues, and in the pursuit kills, it is murder, or manslaughter, according to circumstances (*y*).

Persons having authority to arrest or imprison, using the proper means for that purpose, and being killed in the struggle, it is murder in all who take a part in such resistance, and this will hold in all cases, whether civil or criminal. So in case of breach of the peace, or any misdemeanor short of felony (*z*).

If persons having lawful authority arrest the party, and in a struggle he is killed, murder.

13. *Of Bastards born.*

If a woman delivered of issue, which, being born alive would be a bastard, endeavour by burying, drowning, or any other way, either by herself or others so to conceal its death, that it may not appear whether born alive or not, it is murder, unless she prove, by one witness at least, that it was born dead. The killing must be within the realm (*a*).

27 Jac. 1. c. 27.
16 Car. 1. c. 4.

This statute, however, was repealed by 43 Geo. 3, which enacted, that in such cases the woman should be proceeded against as in any other case of murder, and this last act has been repealed by 9 Geo. 4, c. 31, and she is now indictable for concealing the birth of the child as for a misdemeanor ; and it is unnecessary to show whether the child died before or after its birth. c. 58.

Of Accessory before the Fact.

Coroners are only to inquire of accessories *before* the fact (*b*).

A man who, by his command, counsel, contrivance, consent or encouragement, incites or moves another to commit a felony, though he be not present when it is done, will be an accessory before the fact (*c*) ; as if he urge, persuade or procure him to do it : or if he furnish him with a weapon, &c. for such intent (*d*).

He who is not present at the perpetration can be no more than an accessory before the fact, except in special cases (*e*).

(*x*) Str. 882.

(*y*) Hal. 481. Foster, 271.

(*z*) Foster, 270.

(*a*) 3 Inst. 48. Hale, 54.

(*b*) Jenk. 177.

(*c*) 2 Inst. 182.

(*d*) Foster, 121.

(*e*) Fost. 349.

In the case of poisoning, he who counsels another to give poison, if absent, is only an accessory before the fact : but he who gives or lays the poison is a principal, though absent when taken (*f*).

If he be present, but neither aiding nor abetting, he is then neither principal nor *accessory* (*g*).

Of Deodands.

By *deodands* is meant whatever personal chattel is the immediate occasion of the death of any reasonable creature, which is forfeited to the king, to be applied to pious uses, and to be distributed in alms by his high almoner.

A *deodand* is where any man kills himself, or is by misfortune slain by a horse, cart, or any other thing that moveth to his death ; then the thing which is the cause of or moved to his death shall be forfeited to the king, or grantee of the crown. But the almoner disposes of what belongs to the king (*h*).

No deodand is due when an infant under the age of discretion is killed by a fall from a cart, or horse, or the like, not being in motion (*i*).

But if a horse or ox, or other animal, of his own motion, kill as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands. Where a thing not in motion is the occasion of a man's death, that part only which is the immediate cause is forfeited : as, if a man be climbing up the wheel of a cart, and is killed by falling from it, the wheel alone is a deodand (*k*). But wherever the thing is in motion, not only that part which immediately gives the wound, (as the wheel which runs over his body,) but all things which move with it, and help to make the wound more dangerous, (as the cart and loading, which increase the pressure of the wheel,) are forfeited (*l*). It matters not whether the owner were concerned in the killing or not ; for if a man kills another with my sword, the sword is forfeited, as an accursed thing. No deodands are due for accidents happening upon the high seas, that being out of the jurisdiction of the common law ; but if a man falls from a boat or ship, in fresh water, and is drowned, it

(*f*) 1 Hale, 435.

(*g*) Hale, 439.

(*h*) Lill. Pr. Reg. 607.

(*i*) 1 Hale, 422.

(*k*) Ib. 422.

(*l*) 1 Haw. P. C. c. 26.

hath been said that the vessel and cargo are in strictness of law a deodand (*m*). But juries of late have very frequently taken upon themselves to mitigate these forfeitures, by finding only some trifling thing to have been the occasion of the death: and the *King's Bench* have refused to interfere on behalf of the lord of the franchise to assist so odious a claim (*n*).

But they are not forfeit till the death be found, which is regularly by the coroner (*o*); they then belong to the king, or to the lords of the manors who have the grants thereof *inrolled* in the crown-office, and a discharge by them is good for the inrolment (*p*). 4 & 5 W & M.
c. 22.

Deodands of the goods and chattels of a *felo de se*, that is, of him that kills himself, or is killed by any accident, and upon inquisition thereof found before the coroner, do belong to the king, or to the lords of the manors who have the grants thereof *inrolled* in the crown-office. But as to those which belong to the king, he appoints his chief almoner to dispose of them to the poor, or to be employed in other pious uses. And a discharge given for them by the almoner or his deputy, or such lord of a manor, to any person that hath such goods of a *felo de se* in his possession, is a good discharge in law for them; but a discharge given for them by an under-deputy is no good discharge, for he is no such officer as the law takes notice of.

Upon the death of a man by misadventure, &c. the inquisition ought to inquire of the goods that occasioned the death, and the value of them, and the *villata* where the mischance happened shall be charged with process for the said goods, or their value, though they were not delivered to them (*q*).

If a man be cutting of a tree, and the tree fall upon another tree, and break down the limb, which falls upon a man and kills him, both the limb and the tree that fell are deodands (*r*).

If a man be driving a cart, and the cart fall and kill a man, the cart and horses are a deodand; so if a cart run over a man and kill him, the cart and horses are forfeit (*s*). Cart.

(*m*) 3 Inst. 58. 1 Hale, 423

(*n*) Fost. 266.

(*o*) 1 Hal. P. C. 419.

(*p*) Lill. Pr. Reg. 607.

(*q*) 3 E. 3. Cor. 296. 1 Hale, 419.

(*r*) Ib. 420.

(*s*) 2 Salk. 220.

If a man in watering his horse is drowned, the horse is a deodand. If a man be getting up a cart by the wheel to gather plums, and neither the cart nor horses moving, the man falls and dies, neither the cart nor horses are forfeited, but only the wheel (*t*).

Two men riding over the *Trent* were drowned by the violence of the water, adjudged that their horses are not deodands (*u*).

Where several things move *ad mortem*, they are all deodands (*x*).

As where a cart overturned, and threw a person from it before the wheels of a waggon, which ran over the man and killed him, both the cart and the waggon, and all the horses of both, are deodands (*y*).

So if a horse throws a man into a river, which carries him down to a mill, where he is killed with the wheel (*z*).

Of the Proceedings in Court.

When notice is given to the coroner of a violent death, casualty or misadventure, he then issues his precept or warrant to the constables, headboroughs and beadles of the parish, place or precinct where the party lies dead, to summon twenty-four able and sufficient men, of the same, to appear before him, at the hour and place there stated, to do and execute all those things that shall be given them in charge, on behalf of the king, touching the death of the person named; and the constables, &c. are to return the warrant, with the names of the jurors summoned, to the coroner, on the day prefixed.

If there be not sufficient jurors in the place, the coroner may summon them from the adjoining parish; but the neighbours are supposed to be the best judges of the fact to be inquired into, and therefore they are generally summoned.

As this proceeding is *judicial*, the inquisition ought not to be taken on a *Sunday* (*a*). A *less* number than twelve jurors will not be sufficient in this proceeding.

On the day appointed, the coroner attends, and having received the return of the jurors and precept, &c. the

(*t*) 2 Salk. 220.

(*u*) Cro. Jac. 483.

(*x*) 1 Salk. 220.

(*y*) 2 Salk. 220.

(*z*) Ib.

(*a*) 9 Co. 66.

first thing he does is to direct the officer to open the court by proclamation; by proclaiming, "*Oyez*," three times:

"You good men of this county [*or liberty, as the case may be*] summoned to appear here this day, to inquire for our sovereign lord the king, when, how and by what means *R. F.* came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon."

How to open the court.

It is stated, that the coroner indorses a return on the back of the precept or warrant, which is signed by the summoning officers, thus:

"The execution of this precept or warrant appears in the schedule annexed. The answer of, &c." (*b*).

And that it is necessary the coroner should *keep it*, the want of which may be fatal in case of presentment or indictment.

The coroner then proceeds to call over the jury, beginning with those of the parish where the inquest is to be taken, and the others in succession, marking those who appear with a dash thus ——— against their names, and then they are sworn.

It is said if no return be made to the warrant, or if the jurors make default in appearing, the defaulters are to be returned by the coroner to the sessions, where they shall be amerced, but this now never happens.

And if the constables do not return the precept they cannot be fined, but they are to be presented to the sessions, or at the assizes, and the court imposes the fine (*c*).

If the jurors appear it is said they are not challengeable by either party (*d*). But *Umfreville* says, an objection, properly made, may be admitted (*e*).

It is usual for the jurors to choose their foreman; when done, he is called to the book and sworn first.

The coroner generally saying to the rest of the jurors, Gentlemen, hearken to your foreman's oath; for the oath he is to take on his part is the oath you are severally to observe and keep on your part.

(*b*) *Umfrev.* 285.

(*d*) *Mirr.* c. 1. s. 13. *Britt.* 6.

(*c*) 2 *Inst.* 136. *St. Marl.* c. 18.

(*e*) 185. *Skin.* 45. pl. 16.

2 *Hal. P. C.* 62.

Foreman's oath.

" You shall diligently inquire, and true presentment
 " make, of all such matters and things as shall be here
 " given you in charge, on behalf of our sovereign lord the
 " king, touching the death of *R. F.*, now lying dead, of
 " whose body you shall have the view : you shall present
 " no man for hatred, malice or ill-will, nor spare any
 " through fear, favour or affection ; but a true verdict give
 " according to the evidence, and the best of your skill and
 " knowledge.

" So help you God."

The rest of the jurors are sworn thus :

Three are
 sworn at a time.

" The same oath your foreman has taken on his part,
 " you and each of you are, severally, well and truly to ob-
 " serve and keep on your parts.

" So help you God."

It is said to be prudent to swear an odd number, to avoid the inconvenience of an equal number which may happen on a division of voices, and therefore retard the finding, or not, of an inquisition.

The coroner's
 charge.

After they are sworn, it is usual for the coroner to give a charge, acquainting them with the purpose of the meeting, as thus :

" Gentlemen,

" You are sworn to inquire, on behalf of the king, how
 " and by what means *R. F.* came to his death ; your first
 " duty is, to take a view of the body of the deceased,
 " wherein you will be careful to observe, if there be any
 " marks of violence thereon, from which, and on the exa-
 " mination of the witnesses intended to be produced before
 " you, you will endeavour to discover the cause of his death,
 " so as to be able to return me a true verdict upon this
 " occasion "

When the charge is finished, the coroner goes with the jury to take a view, and examine the body of the deceased.

When the jury
 have taken a
 view, coroner
 adds to his
 charge.

As soon as the view is taken, it is usual for the coroner again to call them over, and add to his former charge some necessary observations he has made on view of the body ; and add,

" That he shall proceed to hear and take down the
 " evidence respecting the fact, to which he must crave
 " their particular attention."

Particular charges are not necessary but in particular cases, arising from the fact, or in the course of the evidence, such as lunacy, *felo de se*, deodand, flight, forfeiture, &c.

Particular charge not necessary.

The deodand requires no other charge than of a value to be put upon what caused the death, and of whose property, and in whose possession.

As to the deodand.

As to the particular charge in case of a flight, which induces a forfeiture, where the party charged is not forthcoming, it may be necessary to add something to the general charge, as thus :

As to flight.

“ Your charge will be further to inquire in what degree
 “ the party charged is guilty, whether of murder or man-
 “ slaughter, or of a killing in his own defence : if you find
 “ him guilty of murder or manslaughter, you are then to
 “ inquire what goods and chattels, lands or tenements, he
 “ had at the time of the act committed, or at any time
 “ since ; if you find the fact to be of a justifiable homi-
 “ cide, from inevitable necessity, or in defence of his own
 “ person, life or property, or where a suspected person
 “ doth fly, and resist the proper officer, and is from ne-
 “ cessity slain, because he could not be otherwise taken ;
 “ this flight and resistance presumes a guilt, and will
 “ incur a forfeiture ; and therefore you are to inquire whe-
 “ ther, in either of the instances the party fled for it, this
 “ is a presumptive confession of the charge ; and you are
 “ then to inquire of his goods and chattels, but no lands
 “ or tenements, in the same manner as if you had found
 “ him guilty.”

The further charge.

The latter charge may be given after the evidence taken so as to have a perfect verdict.

If the inquiry be of the death of one man by another, and it be doubtful whether the wound be mortal or not, a surgeon should be present to examine and show the wound, and it seems, the parish officers get one to attend for that purpose.

As to a surgeon attending the coroner.

After the general charge is given by the coroner, the officer then calls silence, and repeats after the coroner thus :

After general charge given, the further proceeding.

“ If any one can give evidence, on behalf of our sove-
 “ reign lord the king, when, how and by what means *R. F.*
 “ came to his death, let them come forth and they shall
 “ be heard.”

The evidence appearing, the coroner takes down his name, place of abode, and occupation, and then the officer tenders him the following oath :

Oaths to the witnesses.

“ The evidence you shall give to this inquest, on behalf of our sovereign lord the king, touching the death of *R. F.* shall be the truth, the whole truth, and nothing but the truth. *So help you God.*”

The examination is first intituled, which the coroner prepares previous to the sitting of the court (*f*).

Words at length.

——— } Informations of witnesses severally taken and to wit. } acknowledged on the behalf of our sovereign lord the king, touching the death of *R. F.* at the dwelling-house of *J. B.* known by the name of the *Pelican*, in the parish of *D.* in the county of _____ on the fifth day of *October*, in the _____ year of the reign of our sovereign lord *William* the fourth, &c. before *G. H.* gentleman, one of the coroners for the said county, on an inquisition then and there taken on view of the body of the said *R. F.* then and there lying dead, as follows ; to wit.

Or thus, in cases of misadventure or mere casualties, where no future inquiry or trial is consequent :

Misadventure.

——— } Informations of witnesses, taken this to wit. } day of _____ in the parish of *A.* at _____ in the said county, before *G. H.* gentleman, one of the coroners for the said county, touching the death of *R. F.* then and there lying dead, as follows.

But if the inquiry be of what may turn out to be a business at the assizes, as murder, &c. keep to the first title, and be particularly careful to take down the evidence of the fact and circumstances, as that no evidence may be wanted to elucidate the inquiry. Before the witness signs his examination, let it be read over to him, and ask him if it be the whole of the evidence he can give : he signs it to the right hand of the paper.

The coroner generally asks the jurors before the witness signs, whether they have any question for him to ask the witness.

When the witness has signed his name to the examination taken, the coroner then writes thus, to the left-hand side :

“ Taken and acknowledged the day, year, and place above mentioned, before *G. H.* coroner.”

(*f*) Umfrev. 297.

Or it may be at the end of the last information, thus :

“ All the above informations were severally taken and
“ acknowledged, the day, year and place first above-men-
“ tioned, before *G. H.* coroner.”

It seems if all the evidence do not attend, the coroner may adjourn the jury to another day, to the same, or another place, to take and receive other evidence, first taking the jurors in a recognizance for their appearance at the adjourned time and place, further to consider of their verdict, thus :

As to adjourn-
ment

“ Gentlemen : You acknowledge yourselves severally
“ to owe to our sovereign lord the king the sum of 10*l.*
“ to be levied on your goods and chattels, for His Majesty’s
“ use, *upon condition* that you and each of you do person-
“ ally appear *here* again, [*or other adjourned place,*] on
“ the day of instant, at
“ of the clock in the forenoon precisely, then and there
“ to make further inquiry, on behalf of our said sovereign
“ lord the king, touching the death of the said *R. F.* of
“ whose body you have already had the view. Are ye all
“ content.”

The recogni-
zance to appear
at the ad-
journd day.

The coroner then adjourns the court, thus :

“ Gentlemen : The court doth dismiss you for this time ;
“ but requires you severally to appear here again, [*or at*
“ such other adjourned place,] on the day of
“ instant, at of the clock in the forenoon
“ precisely, upon pain of 10*l.* a man, on the condition
“ contained in your recognizance entered into.”

Coroner’s ad-
journdment of
the court.

The coroner may in discretion grant his warrant to bury the deceased, to prevent infection. Then the officer adjourns the court, by making proclamation, thus :

Burial of de-
ceased.

“ *Oyez!*” three times : “ All manner of persons who
“ have any thing more to do at this court, before the
“ king’s coroner for this county, may depart hence, and
“ give their attendance here again, [*or other adjourned*
“ *place,*] on the day of instant,
“ at of the clock in the forenoon precisely. God save
“ the king !”

The coroner will make a proper entry in his minutes of this adjournment, both of time and place.

When the jury are met at the adjourned time and place, the officer opens the court by proclamation, as in the first instance, p. 513, with this addition :

Meeting on the
adjourned day.

“ And you, gentlemen of the jury, who have been impanelled and sworn on this inquest, to inquire touching the death of *R. F.* severally answer to your names, and save your recognizances.”

The coroner first proceeds to business by calling over the names of the jury, declaring the further purpose of this meeting.

If foreigners are examined as witnesses, the coroner is to have an interpreter, who is to be sworn, thus :

Oath of an interpreter, in case foreigners are witnesses.

“ You shall well and truly interpret unto the several witnesses here produced, on the behalf of our sovereign lord the king, touching the death of *R. F.* the oath that shall be administered to them, and also the questions and demands which shall be made to the witnesses, by the court or jury, concerning the matters of this inquiry ; and you shall well and truly interpret the answers which the witnesses shall thereunto give.

“ So help you God.”

After witnesses examined.

He then interprets the oath which is given to witness, in p. 516. After the witnesses are examined, and the evidence gone through, the coroner sums up the evidence to the jury, and directs them to consider of their verdict.

If they withdraw to consider their verdict, the officer is sworn to take care of them, thus :

Oath to officer if jury withdraw.

“ You shall well and truly keep the jury upon this inquiry, without meat, drink, or fire ; you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them whether they be agreed to their verdict, until they shall be agreed.

“ So help you God.”

When the jury are agreed.

The officer takes them to a convenient room, and attends the door on the outside until they are agreed ; when agreed, they return, and the coroner calls over their names, and afterwards asks them if they be agreed in their verdict ; if the foreman replies in the affirmative, the coroner asks them, “ who shall say for you ? ” to which they reply, “ our foreman.” Then the coroner says, “ Mr. Foreman, How do you find *R. F.* came to his death, and by what means ? ” The foreman then relates the verdict, which the coroner records.

It seems twelve at least must agree, if there be no division; but if there be a division, the coroner then collects their voices, beginning with the last on the panel, and rising upwards to the foreman, who declares last. The coroner collects the numbers, and declares the majority, into which the minority sinks, and the finding, (which is to be given by the foreman,) is from necessity, as "*ex dicto majoris partis juratorum*," taken and considered as the verdict of all (g).

Twelve must agree.

When the verdict is given, the coroner then draws up his inquisition in form, which consists of three parts. The *caption*, the *finding*, and the *attestation*.

When verdict pronounced.

The caption is all that part of the inquisition which begins it, and immediately precedes what is called the verdict, or finding of the jury.

The caption of inquisition.

The verdict is that part of the inquisition which immediately follows the caption, and precedes the attestation; and the attestation is the conclusion of the inquisition.

Verdict.

Attestation.

Under the last part of the inquisition, called the attestation, the coroner and jurors sign their names opposite the seals; to the coroner's name he adds, "the office," as *G. H.* coroner.

Inquisition.

The inquisition thus being completed, the coroner addresses the jury thus:

"Gentlemen—Hearken to your verdict, as delivered by you, and as I have recorded it. You find, &c." [*here repeat the substance of the verdict.*]

If it is a case that will come to the assizes, the coroner then binds all proper persons over in a recognizance, to prosecute, and give evidence, according to the provisions of 7 *Geo.* 4.

As to binding over parties, &c.
c. 64. s. 4.

The coroner then makes out his warrant to bury the deceased, (if not before done).

The officer of the court then makes proclamation, thus:

"You good men of this county, [*or liberty,*] who have been impannelled and sworn of the jury, to inquire, for our sovereign lord the king, touching the death of *R. F.* and who have returned your verdict, may depart and take your ease.
God save the king."

Proclamation of discharge to the jurors.

(g) 2 Hal. P. C. 296.

L L 4

It is usual for the coroner to return thanks to the jury for their attendance.

If inquisition
be returned to
the sessions.

When the coroner returns his inquisition to the sessions, he first engrosses it on parchment, indented at the top, and in words at length, and such return is to be made under his own hand and seal only, with his name of office (*h*).

(*h*) Umfrev. 312.

APPENDIX OF FORMS

TO

THE OFFICE OF CORONER.

*To the Constables, Headboroughs and Beadles of the
Parish of in the County of*

————— } BY virtue of my office, these are in His Majesty's name to charge and command you, that on sight hereof you summon and warn twenty-four able and sufficient men of your parish personally to be and appear before me, on the day of at of the clock in the forenoon, at the house of *A. B.* called or known by the name or sign of the situate in in the said parish and county, then and there to do and execute all such things that shall be given them in charge on behalf of our sovereign lord the king's majesty, touching the death of *R. F.*, and for so doing this shall be your warrant. And that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned, and further to do and execute such other matters as shall be then and there enjoined you: and have you then there this warrant.

Coroner's warrant or precept to summon a jury.

Given under my hand and seal, this day of
18

G. H. Coroner.

N. B. The coroners should furnish the under summonses to the constable to serve the jurors with, which are printed.

————— } By virtue of a warrant under the hand and seal of *G. H.* gentleman, one of His Majesty's coroners for this county, you are hereby summoned personally to be and appear before him, as a jurymen, on the day of at of the clock in the evening precisely, at the house of known by the sign of the in the parish of

Summons by the constable of the jurors.

in the said county, then and there to inquire, in His Majesty's behalf, touching the death of *R. F.*, and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Hereof fail not, at your peril.

Dated the _____ day of _____
To _____ of _____ in the parish of _____
in the county of _____ Constable.

The form of the
inquisition by
drowning.

By lunacy.

_____ } An inquisition indented taken for our sove-
to wit. } reign lord the king, at the parish of
in the county of _____ the fifth day of
in the _____ year of the reign of our sovereign lord, &c.
before *T. S.*, gentleman, one of the coroners of our said
lord the king for the said county, on view of the body of
R. F., then and there lying dead, upon the oath of *A. B.*
[*here name the jurors sworn*] good and lawful men of the
said county duly chosen, and who being then and there
duly sworn and charged to inquire, for our said lord the
king, when, where, how and after what manner the said
R. F. came to his death, do upon their oath say, That the
said *R. F.* not being of sound mind, memory and under-
standing, but lunatic and distracted, on the _____ day of
_____ in the year aforesaid, at the parish and in the county
aforesaid, to wit, into the river of *T.*, there did cast and throw
himself, by means of which said casting and throwing, he
the said *R. F.* in the water of the said river, was then and
there suffocated and drowned, of which said suffocation and
drowning he the said *R. F.* then and there instantly died.
And so the jurors aforesaid, upon their oath aforesaid, do
say, that the said *R. F.* in manner and means aforesaid,
not being of sound mind, memory and understanding, but
lunatic and distracted, did drown and kill himself. In wit-
ness whereof, as well the said coroner as the jurors afore-
said, have to this inquisition set their hands and seals on the
day and year, and at the place above mentioned.

G. H. Coroner.

A. B. }
C. D. } Jurors.
E. F. &c. }

The place of the death and finding of the body being essential to found the jurisdiction of the coroner, if they are omitted to be stated it is a fatal objection. So a mis-statement as to the property in the subject which is the cause of death (*a*).

If the names of jurors are not stated in the body of the inquisition, and are only subscribed by initials, it is bad (*b*).

(*a*) *R. v. Evett*, 6 B. & Cr. 247.

(*b*) *Ib.*

So an uncertainty in showing the nature of the materials which caused the death, or omitting the value, held void *pro tanto* (c).

An inquisition signed "Deputy-steward and coroner," held sufficient, as there might be a good custom for a coroner to appoint a deputy; and it might be read coroner and deputy-steward (d).

[*As in the former precedent, to the words upon their oath say:*] That the said *R. F.* not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on _____ with force and arms, at the parish and in the county aforesaid, in and upon himself, in the peace of God and of our said sovereign lord the king then and there being, feloniously, wilfully, and of his malice forethought, did make an assault; and that the said *R. F.* one end of a certain piece of small cord, of no value, unto a certain iron bar then and there fixed in the ceiling of the round-house then and there situate and being, (wherein the said *R. F.* was then and there a prisoner in custody charged with felony,) and the other end thereof about his neck, did fix, tie and fasten, and therewith did then and there hang, suffocate and strangle himself; of which said hanging, suffocation and strangling, he the said *R. F.* did then and there die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *R. F.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder himself, against the peace of our said lord the king, his crown and dignity. And that the said *R. F.* at the time of the committing the felony and murder aforesaid, had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors (e). In witness, &c.

Inquisition by hanging.
Felo de se.

No goods.

[*As before:*] That the said *R. F.* not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on _____ with force and arms, at the parish and in the county aforesaid, in and upon himself, in the peace of God and of our said sovereign lord the king, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said *R. F.* with a certain drawn sword, made of iron and steel, of the value of 5s. which he the said *R. F.* then and there had and held in his right hand, did then and there give unto himself one mortal wound in and upon the belly of him the said *R. F.* under the left breast, of the breadth of one inch, and of the depth of six inches; of which said

Inquisition by stabbing.
Felo de se.

(c) Carruther's *ex parte*, 2 M. & Ry. 397.

(d) *Ib.*

(e) The 7 & 8 Geo. 4. c. 2. s. 5. relieving juries from finding flight or forfeiture, applies only to parties *in lictis*.

mortal wound he the said *R. F.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *R. F.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder himself, against the peace of our sovereign lord the king, his crown and dignity. And that the said *R. F.* at the time of the said felony and murder so as aforesaid done and committed, had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors. In witness, &c.

No goods.

By shooting.
Felo de se.

That the said *R. F.* not having, &c. [*as before, until you come to the word assault, then proceed*]: And that the said *R. F.* a certain pistol, of the value of 10*s.*, charged with gunpowder and a leaden bullet, which he the said *R. F.* then and there had and held in his right hand, feloniously, wilfully, and of his malice forethought, to and against the head of him the said *R. F.* did then and there shoot off and discharge; and that by means of the shooting off and discharging of the pistol aforesaid he, the said *R. F.*, did then and there give unto himself with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the force of the gunpowder aforesaid, in and upon the head of him the said *R. F.* one mortal wound of the breadth of one inch and depth of three inches, of which said mortal wound he the said *R. F.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, &c. [*as in the former, to*] In witness, &c.

By drowning.
Felo de se.

That the said *R. F.* &c. [*unto the word assault*]: And that the said *R. F.* into a certain river or stream of water, commonly called _____ at the parish aforesaid, in the county aforesaid, did violently cast and throw himself, by means of which said casting and throwing he the said *R. F.* in the waters of the said river, was then and there suffocated and drowned, of which said suffocation and drowning he, the said *R. F.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, &c. [*as in the last but one, to*] In witness, &c.

By poisoning.
Felo de se.

That the said *R. F.* &c. [*as before, &c.*] And that the said *R. F.* a certain quantity of white arsenic, being a deadly poison, into a certain quantity of tea infused in warm water, feloniously, wilfully, and of his malice forethought, did then and there put and mix, and then and there, well knowing the said white arsenic to be a deadly poison, and that the said *R. F.* a great quantity of the said tea in which the said white arsenic was so put and mixed as aforesaid afterwards, to wit, on the same day, in the same year, at the parish aforesaid, in the county aforesaid,

feloniously, wilfully, and of his malice forethought, did take, drink and swallow down, by means whereof he the said *R. F.* then and there became sick and distempered in his body; and of the said poison and the said sickness and distemper thereby occasioned, from the said day of in the year aforesaid, until the day of the same month, in the same year, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live; on which said day of in the year aforesaid, at the parish and in the county aforesaid, he the said *R. F.* of the poison, sickness and distemper aforesaid, did die. And so the jurors aforesaid, &c. [*as before, to*] In witness, &c. [*as before.*]

That the said *R. F.* not having the fear of God, &c. [*as before, to the word assault:*] And that the said *R. F.* with a certain razor, made of iron and steel, of the value of 1*s.* which he the said *R. F.* then and there had and held in his right hand, the throat or gullet of him the said *R. F.* did then and there strike and cut, thereby then and there giving unto himself, with the razor aforesaid, in and upon the said throat or gullet of him the said *R. F.* one mortal wound of the length of three inches and depth of one inch, of which said mortal wound he the said *R. F.* then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said *R. F.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder himself, against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do say, that the said *R. F.* at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of *C. D.* who claims the same. In witness, &c.

By cutting his
throat.
Felo de se.

Goods found.

An inventory of the goods and chattels of R. F. in the inquisition annexed named, who feloniously, wilfully, and of his malice forethought, cut his throat.

Imprimis, In the hall, two mahogany tables, six walnut tree chairs, &c. [*specifying every particular, as well out of doors as in. When the whole is taken, conclude with saying*]

All which said goods and chattels are appraised and valued at the sum of 20*l.* [The coroner is to write his name, with his name of office, underneath; and let the jurors also sign their names; then annex the schedule, which should be engrossed on parchment, to be annexed to the inquisition, and return it.]

Appraisement.

N. B. If the goods be not claimed, you only say in whose hands they are, without more, or the coroner may seize and deliver them in charge to *the ville*, and in the inquisition say in whose hand (such as the constable, churchwardens or overseers) you deliver them for the use of His Majesty, who, "*prima facie*," is always entitled, till a grantee appears and claims (*e*).

If the party in whose custody the goods, &c. are, shall appear to be servant or bailiff to any subject who may claim title, (and in those cases they generally give due attendance to hear the verdict and serve their principal), in this case say in the inquisition, that they remain or are in the hands and custody of *A. B.* the servant or bailiff of *C. D.* who claims the same.

Petit Treason—in the Wife.

By killing the husband with the pin of a window shutter.

That *A. B.* late of the parish aforesaid, in the county aforesaid, widow, late the wife of the said *C. B.* not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and of her malice forethought, contriving and intending him the said *C. B.* her said late husband, to deprive of his life, and him feloniously and *traitorously* to kill and murder, on with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *C. B.* her said husband, in the peace of God and of our said lord the king then and there being, feloniously, *traitorously*, wilfully, and of her malice forethought, did make an assault; and that the said *A. B.* with a certain iron pin of a window shutter, of the value of 6*d.* which she the said *A. B.* then and there had and held in her right hand, him the said *C. B.* in and upon the head of him the said *C. B.* near unto the left temple, did then and there strike and beat, thereby then and there giving unto him the said *C. B.* with the iron pin aforesaid, in and upon the head of him the said *C. B.* near unto the left temple aforesaid, one mortal wound, of the length of two inches, and depth of half an inch, of which said mortal wound he the said *C. B.* from the said day of the same month, in the same year, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said day of in the year aforesaid, at the parish and in the county aforesaid, of the mortal wound aforesaid, he the said *C. B.* died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* him the said *C. B.* her said husband, in

manner and by the means aforesaid, feloniously, *traitorously*, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.*, at the time of the committing of the felony and murder aforesaid, or at any time since, had not any goods or chattels, lands or tenements, in the said county or elsewhere, to the knowledge of the said jurors. In witness &c.

No goods.

That *A. B.* late of the parish aforesaid, in the county aforesaid, widow, late the wife of the said *C. B.* not having the fear of God before her eyes, but moved and seduced by the instigation of the devil, and of her malice forethought, contriving and intending him the said *C. B.*, her said late husband, to deprive of his life, and him feloniously and *traitorously* to kill and murder, on with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *C. B.* in the peace of God and of our said lord the king then and there being, feloniously, *traitorously*, wilfully, and of her malice forethought, did make an assault; and that the said *A. B.* a great quantity of yellow arsenic, being a deadly poison, into a certain quantity of strong beer, feloniously, *traitorously*, wilfully, and of her malice forethought, did then and there put and mix (she the said *A. B.* then and there well knowing the said yellow arsenic to be a deadly poison); and that the said *A. B.* afterwards, to wit, on the same day and year, at the parish aforesaid, in the county aforesaid, feloniously, *traitorously*, wilfully, and of her malice forethought, the said poison in the strong beer aforesaid so as aforesaid put and mixed, did offer and give unto him the said *C. B.* to take, drink and swallow down; and that the said *C. B.* not knowing the poison aforesaid into the strong beer aforesaid to have been as aforesaid put and mixed, afterwards, to wit, on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, the said poison in the strong beer aforesaid so as aforesaid put and mixed, by the procurements of the said *A. B.*, did then and there take, drink, and swallow down, and thereupon the said *C. B.* by the poison aforesaid so taken, drank and swallowed down as aforesaid, became then and there sick and distempered in his body; and the said *C. B.* of the poison aforesaid, and of the sickness and distemper occasioned thereby, from the said day of in the year aforesaid, until the day of the same month, in the same year, at the parish and in the county aforesaid, did languish, and languishing did live; on which said

Poisoning.

day of _____ in the year aforesaid, he the said *C. B.* at the parish aforesaid, in the county aforesaid, of the poison aforesaid, and of the sickness and distemper thereby occasioned, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* him the said *C. B.* her said husband in manner and by the means aforesaid, feloniously, *traitorously*, wilfully, and of her malice forethought, did poison, kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *A. B.* at the time of the committing of the felony or murder aforesaid, or at any time since, had not any goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors. In witness, &c.

No goods.

By stabbing.

[*As in the other, to the word assault:*] And that the said *A. B.* with a certain penknife, made of iron and steel, of no value, which she the said *A. B.* then and there had and held in her right hand, him the said *C. B.* in and upon the left breast of him the said *C. B.* her said husband, did then and there strike, stab and penetrate; and that the said *A. B.* by the striking and stabbing aforesaid, did then and there give unto him the said *C. B.* in and upon his left breast aforesaid, with the penknife aforesaid, one mortal wound of the length of one inch and of the depth of three inches, of which said mortal wound he the said *C. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* him the said *C. B.* her said husband, in manner and by the means aforesaid, feloniously, *traitorously*, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *A. B.* after she had committed the felony and murder aforesaid, in manner and by the means aforesaid, withdrew and fled for the same; and that at the time of committing thereof, or at any time since, she had not any goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors. And that the inhabitants of the said parish did not make and levy, and cause to be made and levied, *hue and cry* after the said *A. B.* in order that the said *A. B.* might have been apprehended and taken for the said felony and murder, as by the laws and customs of this realm they ought to have done. In witness, &c.

Flight.

No goods.

By cutting the throat.

[*As in the other to the word assault:*] And that the said *A. B.* with a certain case-knife, made of iron and steel, of the value of 6*d.* which she the said *A. B.* then and there had and held in her right hand, the throat or gullet of him

the said *C. B.* feloniously, *traitorously*, wilfully, and of her malice forethought, did strike and cut: and that the said *A. B.* with the case-knife aforesaid, by the striking and cutting aforesaid, did then and there give unto him the said *C. B.* in and upon the said throat or gullet of him the said *C. B.* one mortal wound of the length of three inches and depth of one inch, of which said mortal wound he the said *C. B.* from the said day of in the year aforesaid, to the day of the same month, in the same year, at the parish aforesaid, in the county aforesaid, and also in the parish of in same county, to wit, in the hospital there situate, did languish, and languishing did live; on which said day in the year aforesaid, he the said *C. B.*, in the hospital aforesaid, at the said last-mentioned parish of in the county aforesaid, of the mortal wound aforesaid did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* him the said *C. B.* her said husband, in manner and by the means aforesaid, feloniously, *traitorously*, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *A. B.* at the time of the committing the felony and murder aforesaid, or at any time since, had no goods or chattels, lands or tenements, in the said county, or elsewhere, to the knowledge of the said jurors. In witness, &c.

Languishing in
two parishes.

No goods.

Petit Treason—in the Servant.

[*As in one other, to the word assault:*] And that the said *C. D.* a certain piece of small cord, of no value, about the neck of him the said *A. B.* then and there feloniously, *traitorously*, wilfully, and of his malice forethought, did fix, tie and fasten, and that the said *C. D.* him the said *A. B.* with the piece of small cord aforesaid, did then and there choke, suffocate and strangle, of which said choking, suffocation and strangling he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* the servant of the said *A. B.* him the said *A. B.* his said master, in manner and by the means aforesaid, feloniously, *traitorously*, wilfully, and of his malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *C. D.* after he had done and committed the felony and murder aforesaid, in manner aforesaid, withdrew and fled for the same. And that at the time of the doing and committing thereof, or at any time since, he had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge or notice of the said jurors. In witness &c.

Servant
strangling
the master.

Flight.

No goods.

Murder.

Killing with a
poker.

That *C. D.* late of the parish aforesaid, in the county aforesaid, labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on _____ with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *A. B.* in the peace of God and of our said lord the king then and there being feloniously, wilfully, and of his malice forethought, did make an assault. And that the said *C. D.* with a certain iron poker, of the value of one shilling, which the said *C. D.* then and there had and held in both his hands, him the said *A. B.* in and upon the head of him the said *A. B.* then and there divers times, feloniously, wilfully, and of his malice forethought, did strike and beat. And that the said *C. D.* did then and there give unto him the said *A. B.*, in and upon the head of him the said *A. B.* with the iron poker aforesaid, divers mortal bruises, of which said mortal bruises he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *C. D.* after the doing and committing of the said felony and murder aforesaid, withdrew and fled for the same. And that at the time of the doing and committing thereof, or at any time since, he had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge or notice of the said jurors. In witness whereof, &c.

Flight.

No goods.

Killing of the
wife with a pair
of bellows by
the husband.

[*As before, to the word assault :*] And that the said *A. B.* with a certain pair of bellows, of the value of 1 s. which he the said *A. B.* then and there had and held in both his hands, her the said *S.* in and upon the right side of the head, near the right temple of her the said *S.* then and there feloniously, wilfully, and of his malice forethought, did hit and strike. And that the said *A. B.* did then and there give unto her the said *S.* by such striking at her with the bellows aforesaid, one mortal bruise in and upon the said side of the head near the right temple of her the said *S.* of which said mortal bruise she the said *S.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* her the said *S.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder, against the peace of our said lord the king, his crown and

dignity. And that after the said *A. B.* had done and committed the felony and murder aforesaid, in manner and by the means aforesaid, he the said *A. B.* withdrew and fled for the same. And that the said *A. B.* at the time of the doing and committing of the felony and murder aforesaid, or at any time since, had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors. In witness, &c.

Flight.

No goods.

[*As before, to the word assault:*] And that the said *C. D.* a certain pistol, of the value of 10*s.* charged and loaded with gunpowder and a leaden bullet, which he the said *C. D.* then and there had and held in his right hand, to and against the head of him the said *A. B.* did then and there shoot off and discharge; by means whereof he the said *C. D.* feloniously, wilfully, and of his malice forethought, did then and there give unto him the said *A. B.* with a leaden bullet aforesaid, so as aforesaid shot off and discharged out of the pistol aforesaid, by the force of the gunpowder aforesaid, in and upon the head of him the said *A. B.* one mortal wound, penetrating the brain of him the said *A. B.* of which said mortal wound he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.* in the manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *C. D.* &c. [*as before, if in the case of a flight and no goods, &c. or of either of them, as the fact may turn out.*] In witness, &c.

By shooting with a pistol.

Flight.

No goods.

[*As before, to the word assault:*] And that the said *C. D.* a certain linen handkerchief, of no value, about the neck of her the said *A. B.* then and there feloniously, wilfully, and of her malice forethought, did fix, tie and fasten, and that the said *C. D.* her the said *A. B.* with the linen handkerchief aforesaid, feloniously, wilfully, and of her malice forethought, did then and there choke, strangle and suffocate; of which said choking, strangling and suffocation she the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* her the said *A. B.* in manner and by the means aforesaid, feloniously, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. [*Flight—Goods, &c.—in both or in either case as before.*] In witness, &c.

By strangling.

By sending
poison (*f*).

That *G. L.* late of the parish aforesaid, in the county aforesaid, labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, and of his malice forethought, contriving and intending the said *A. B.* with poison feloniously to kill and murder, on _____ with force and arms, at the parish aforesaid, in the county aforesaid, a great quantity of yellow arsenic, being a deadly poison, with a certain quantity of white wine, feloniously, wilfully, and of his malice forethought, did mix and mingle, he the said *G. L.* then and there well knowing the said yellow arsenic to be a deadly poison; and that the said *G. L.* afterwards, to wit, on the same day and year, at the parish aforesaid, in the county aforesaid, the poison aforesaid, so as aforesaid mixed and mingled with the white wine aforesaid, feloniously, wilfully, and of his malice forethought, did send to her the said *A. B.* to take, drink and swallow down; and that the said *A. B.* not knowing the poison aforesaid in the white wine aforesaid to have been mixed and mingled as aforesaid, afterwards, to wit, on the same day, in the same year, at the parish aforesaid, in the county aforesaid, the said poison so as aforesaid mixed and mingled, by the procurement and persuasion of the said *G. L.*, did take, drink and swallow down; and thereupon the said *A. B.* by the poison aforesaid, so mixed and mingled as aforesaid, and so taken, drank and swallowed down as aforesaid, became then and there sick and distempered in her body, and the said *A. B.* of the poison aforesaid, and of the sickness and distemper occasioned thereby, from the said _____ day of _____ in the year aforesaid, until the _____ day of _____ the same month, in the same year, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live; on which said _____ day of _____ in the year aforesaid, she the said *A. B.* at the parish aforesaid, in the county aforesaid, of the poison aforesaid, and of the sickness and distemper thereby occasioned, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *G. L.* her the said *A. B.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did poison, kill and murder, against the peace of our said lord the king, his crown and dignity. [*Flight—Forfeiture—as before.*] In witness, &c.

By giving
poison.

That *M. S.* late of the parish aforesaid, in the county aforesaid, labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, and of his malice forethought, contriving and intend-

ing her the said *A. B.* with poison feloniously to kill and murder, on _____ with force and arms, at the parish aforesaid, in the county aforesaid, a great quantity of white arsenic, being a deadly poison, in a certain quantity of cyder, feloniously, wilfully, and of his malice forethought, did mix and mingle, he the said *M. S.* then and there well knowing the said white arsenic to be a deadly poison. And that the said *M. S.* afterwards, to wit, on the same day and year, at the parish aforesaid, in the county aforesaid, the poison aforesaid, so as aforesaid mixed and mingled, feloniously, wilfully, and of his malice forethought, did give and offer to her the said *A. B.* to take, drink and swallow down; and that the said *A. B.* not knowing the poison aforesaid in the cyder aforesaid to have been mixed and mingled as aforesaid, afterwards, to wit, on the same day and year, at the parish aforesaid, in the county aforesaid, the said poison so as aforesaid mixed and mingled, by the procurement and persuasion of the said *M. S.* did take, drink and swallow down; and thereupon the said *A. B.* by the poison aforesaid, so as aforesaid taken, drank and swallowed down, became then and there sick and distempered in her body; and the said *A. B.* of the poison aforesaid, and of the sickness and distemper thereby occasioned, from the said _____ day of _____ in the year aforesaid, until the _____ day of the same month, in the same year, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live; on which said _____ day of _____ in the year aforesaid, at the parish and in the county aforesaid, she the said *A. B.* of the poison aforesaid, and of the sickness and distemper thereby occasioned, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *M. S.* her the said *A. B.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did poison, kill and murder, against the peace of our said lord the king, his crown and dignity. [*Flight—Forfeiture occasionally, as before.*] In witness, &c.

That *W. B.* late of the parish aforesaid, in the county aforesaid, labourer, and *G. B.* late of the same, labourer, not having the fear of God before their eyes, but moved and seduced by the instigation of the devil, and of their malice forethought, contriving and intending him the said *W. F.* feloniously to kill and murder, on _____ with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *W. F.* in the peace of God and of our said lord the king, feloniously, wilfully, and of their malice forethought, did make an assault; and that the said *W. B.* and *G. B.* then and there feloniously, wilfully, and

By forcing to
drink to excess.

of their malice forethought, did compel and force him the said *W. F.* then and there against his will to take, drink and swallow down a great quantity, to wit, three half pints of distilled spirituous liquor, commonly called *Geneva*. And that the said *W. F.* by the compulsion and force aforesaid of them the said *W. B.* and *G. B.* then and there against his will did take, drink and swallow down a great quantity of the said distilled spirituous liquor called *Geneva*, to wit, the quantity of three half pints; by reason of which said drinking and swallowing down of the said great quantity of spirituous liquor called *Geneva*, in manner aforesaid, by the compulsion aforesaid, and against the will of him the said *W. F.* he the said *W. F.* then and there became suffocated and choked, and thereof then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that they the said *W. B.* and *G. B.* him the said *W. F.* in manner and by the means aforesaid, feloniously, wilfully, and of their malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. [*Flight—Forfeiture—as before.*] In witness, &c.

By forcing a
sick person into
the street.

[*As before.*] That *W. J.* late of the parish aforesaid, in the county aforesaid, labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on at an unreasonable hour in the night, to wit, about the hour of eleven in the night of the same day, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *E. B.* then and there being in the peace of God and of our said lord the king, and also then and there being in extreme sickness and weakness of body, occasioned by a fever, and then and there confined to her bed, in the dwelling house of him the said *W. J.* there situate, feloniously, wilfully, and of his malice forethought, did make an *assault*. And that the said *W. J.* her the said *E. B.* from and out of the said bed, and also out of the said dwelling-house, into the public and open street there, did then and there violently, feloniously, wilfully, and of his malice forethought, remove, force and drive, and there leave, (he the said *W. J.* then and there well knowing the said *E. B.* to be then in extreme sickness and weakness of body occasioned by the fever aforesaid,) by means whereof she the said *E. B.* through cold and the inclemency of the weather, and for want of due care and other necessaries requisite for a person in such sickness and weakness as aforesaid, then and there died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *W. J.* her the said *E. B.* in manner and by the means aforesaid, feloniously, wilfully and of his

malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. [*Flight—Forfeiture—as before.*] In witness, &c.

That *A. B.* late of the parish aforesaid, in the county aforesaid, single woman, on being big with the said male child, afterwards, to wit, on the same day, in the same year, at the parish aforesaid, in the county aforesaid, the said male child alone and secretly from her body, by the providence of God, did bring forth alive; which said male child, by the laws and customs of this realm, was a *bastard*. And that the said *A. B.* not having the fear of God before her eyes, but moved and seduced by the instigation of the devil, afterwards, to wit, on the same day, and in the same year, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said male *bastard* child so alive, and in the peace of God and of our said lord the king then and there being, feloniously, wilfully, and of her malice forethought, did make an assault. And that she the said *A. B.* with both her hands about the neck of him the said male *bastard* child then and there fixed, he the said male *bastard* child did then and there feloniously, wilfully, and of her malice forethought, choke, strangle and suffocate, of which said choking, strangling and suffocation, he the said male *bastard* child then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* him the said male *bastard* child, in manner and by the means aforesaid, feloniously, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity.—[*Flight—Goods, &c.—in both or either case, as before.*] In witness, &c. *ut supra*.

That *A. B.* late of the parish aforesaid, in the county aforesaid, single woman, on being then and there big with a female child, afterwards, to wit, on the same day and year, at the parish aforesaid, in the county aforesaid, the said female child alone and secretly from her body, by the providence of God, did bring forth alive, which said female child, by the laws and customs of this kingdom, was a *bastard*. And that the said *A. B.* not having the fear of God before her eyes, but moved and seduced by the instigation of the devil, afterwards, to wit, on the same day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said new born female child so alive, and in the peace of God and of our said lord the king then and there being, feloniously, wilfully, and of her malice forethought, did make an *assault*. And that the said *A. B.* her the said new born female child, with both her hands, in a certain linen cloth, of no value, then and

Of a bastard
by strangling.

This generally serves as a charge where there are no marks of violence or evidence of any particular mode of death.

The concealment of the birth is now made a misdemeanor by 9 Geo. 4. c. 31. s. 14.

By suffocating
a bastard.

there feloniously, wilfully, and of her malice forethought, did wrap up and fold, by means of which said wrapping up and folding of her the said new born female *bastard* child in the linen cloth aforesaid, she the said new born female child was then and there suffocated and smothered, of which said suffocation and smothering she the said new born female child then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* her the said new born female *bastard* child, in manner and by the means aforesaid, feloniously, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity.— [*Flight—Forfeiture—as before.*] In witness, &c.

By drowning
a bastard.

That *A. B.* late, &c. [*as before, to the word assault :*] And that the said *A. B.* her the said new born female child did then and there take into both her hands, and her the said new born female child into a certain pond of water, then and there being in a certain field, commonly called the _____ field, situate in the parish aforesaid, in the county aforesaid, then and there feloniously, wilfully, and of her malice forethought, did violently cast and throw ; by means whereof she the said new born female child, in the waters of the said pond, was then and there suffocated and drowned ; of which said suffocation and drowning she the said new born female child then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* her the said new born female *bastard* child, in manner and by the means aforesaid, feloniously, wilfully, and of her malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. [*Flight—Forfeiture—as before.*] In witness, &c.

By throwing
down a privy.

That *A. B.* late of the parish aforesaid, in the county aforesaid, single woman, [*as before, to the word assault :*] And that the said *A. B.* him the said new born male child did then and there take into both her hands, and him the said new born male child into a certain privy or necessary-house there situate, then and there, feloniously, wilfully, and of her malice forethought, did violently cast and throw down ; by means whereof he the said new born male child, in the soil or filth then and there contained in the said privy or necessary-house, was then and there suffocated and smothered, of which said suffocation and smothering he the said new born male child then and there instantly died. And so the jurors aforesaid, &c. [*as before.*] [*Flight—Forfeiture—as before.*] In witness, &c.

Throwing a child down a privy has been held evidence of an endeavour to conceal the birth, so as to subject the party to the penalties of 9 *Geo. 4, c. 31 (g)*.

That *G. D.* late of the parish aforesaid, in the county aforesaid, labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, and of his malice forethought, contriving and intending him the said *S. L.* apprentice to him the said *G. D.* feloniously to starve, kill and murder, on the day of in the year aforesaid, and continually afterwards until the day of the same month, in the same year, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *S. L.* his apprentice as aforesaid, in the peace of God and of our said lord the king then and there being, feloniously, wilfully, and of his malice forethought, did make an *assault*. And that the said *G. D.* him the said *S. L.* in a certain room in the dwelling house of him the said *G. D.* there situate, feloniously, wilfully, and of his malice forethought, did secretly confine and imprison. And that the said *G. D.* from the said day of in the year aforesaid, until the day of the same month, in the same year, at the parish aforesaid, in the county aforesaid, feloniously, wilfully, and of his malice forethought, did neglect, omit and refuse to give and administer to him the said *S. L.* sufficient meat and drink necessary for the sustenance, support and maintenance of him the said *S. L.* by means of which said confinement and imprisonment, and also for want of such meat and drink as were sufficient and necessary for the sustenance, support and maintenance of the body of him the said *S. L.* he the said *S. L.* from the said day of in the said year, until the said day of the same month, in the same year, at the parish aforesaid, in the county aforesaid, did languish and pine, and became greatly consumed and emaciated in his body, and during the time aforesaid, did languish, and languishing did live; on which said day of in the year aforesaid, at the parish and in the county aforesaid, he the said *S. L.* of such confinement and imprisonment, and for want of such due and necessary meat and drink for the sustenance, support and maintenance of his body, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *G. D.* him the said *S. L.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did starve, kill and murder, against the peace of our said lord the

By starv'ng
to death.

king, his crown and dignity. [*Flight—Forfeiture.*] In witness, [*as before.*]

By riding over a person with a mare.

That *W. W.* late of the parish aforesaid, in the county aforesaid, labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on _____ with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *A. B.* in the peace of God and of our said lord the king then and there being, feloniously, wilfully, and of his malice forethought, did make an *assault*. And that the said *W. W.* then and there riding upon a certain grey mare, of the price of 10*l.*, the said mare in and upon the said *A. B.* then and there feloniously, wilfully, and of his malice forethought, did ride and force, and upon and over the said *A. B.* with the mare aforesaid then and there did ride and throw to the ground, by means whereof the said mare, with her hinder feet, him the said *A. B.* so thrown to and on the ground as aforesaid, in and upon the hinder part of the head of him the said *A. B.* did then and there strike and kick, thereby then and there giving unto him the said *A. B.* in and upon the said hinder part of the head of him the said *A. B.* one mortal fracture and contusion, of which said mortal fracture and contusion he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *W. W.* him the said *A. B.* in manner and by the means aforesaid, feloniously, wilfully, and of his malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity.—[*Flight—Forfeiture.*] In witness, &c. [*as before.*]

Manslaughter.

By throwing to the ground and bruising.

That *C. D.* late of the parish of _____ in the said county, labourer, on _____ with force and arms, at aforesaid, in the county aforesaid, in and upon the said *A. B.* in the peace of God and of our said lord the king then and there being, feloniously did make an *assault*. And that the said *C. D.* with both his hands him the said *A. B.* then and there feloniously did throw and cast to the ground, thereby then and there giving unto him the said *A. B.* one mortal bruise in and upon the lower part of the belly of him the said *A. B.* under the navel, of which said mortal bruise he the said *A. B.* at the parish of _____ aforesaid, in the county aforesaid, and also at the said parish of _____ in the same county, from the said _____ day of _____ in the year aforesaid, until the _____ day of _____ in the same year, did languish, and languishing did live; on which said _____ day of _____ in the year aforesaid, at the

said parish of in the county aforesaid, he the said *A. B.* of the mortal bruise aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.* in manner and by the means aforesaid, feloniously did kill and slay, against the peace of our said lord the king, his crown and dignity. And that the said *C. D.* after he had done and committed the felony and manslaughter aforesaid, in manner aforesaid, withdrew and fled for the same. And that he the said *C. D.* at the time of the doing and committing of the felony and manslaughter aforesaid, or at any time since, had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge or notice of the said jurors. In witness, &c.

Flight.

No goods.

That *C. D.* late of the parish of in the county aforesaid, labourer, together with divers other persons, to the jurors aforesaid as yet unknown, on the day of in the year aforesaid, with force and arms, at the said parish of and county aforesaid, in and upon the said *A. B.* in the peace of God and of our said lord the king then and there being, feloniously did make an *assault*. And that the said *C. D.* with a certain oaken stick, of no value, which he the said *C. D.* then and there had and held in his right hand, him the said *A. B.* in and upon the head, shoulders, breast and stomach of him the said *A. B.* did then and there divers times feloniously strike and beat. And that the said *C. D.* and the said divers other persons, to the jurors aforesaid as yet unknown, him the said *A. B.* did then and there violently and feloniously cast and throw to the ground. And that the said *C. D.* and the said divers other persons unknown, him the said *A. B.* then and there lying upon the ground as aforesaid, with the feet of him the said *C. D.* and also with the feet of the said divers other persons unknown, in and upon the said head, shoulders, breast and stomach of him the said *A. B.* then and there feloniously did strike, kick and trample, thereby then and there giving unto him the said *A. B.* divers mortal bruises in and upon the said head, shoulders, breast and stomach of him the said *A. B.* of which said mortal bruises he the said *A. B.* at the said parish of and also at the parish of in the county aforesaid, and also in a certain hospital, situate in the parish of in the county aforesaid, from the said day of in the year aforesaid, until the day of in the same year, did languish, and languishing did live; on which said day of in the same year, in the hospital aforesaid, in the said parish of in the county aforesaid, he the said *A. B.* of the mortal bruises

By throwing to the ground, beating and kicking, &c.

aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* and the said divers other persons to the jurors aforesaid as yet unknown, him the said *A. B.* in manner and by the means aforesaid, feloniously did kill and slay, against the peace of our said lord the king, his crown and dignity.—[*Flight—Forfeiture*] In witness, &c. [*as before.*]

By beating
about the head
and temples.

[To the word *assault.*] And that the said *C. D.* with both his hands him the said *A. B.* did then and there, in and upon the head and left temple of him the said *A. B.* feloniously strike and beat. And that the said *C. D.* by the striking and beating aforesaid did then and there give unto him the said *A. B.* one mortal bruise in and upon the said left temple of him the said *A. B.* of which said mortal bruise he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.* in manner and by the means aforesaid, feloniously did kill and slay, against the peace of our said lord the king, his crown and dignity. [*Flight—Forfeiture.*] In witness, &c. [*as before.*]

By throwing
a knife.

[To the word *assault.*] And that the said *J. M.* a certain large knife made of iron and steel, of the value of 6*d.* which he the said *J. M.* then and there had and held in his right hand, at and against him the said *A. B.* then and there feloniously did cast and throw, and him the said *A. B.* with the knife aforesaid, so cast and thrown as aforesaid, in and upon the left side of the body of him the said *A. B.* near the groin, then and there feloniously did strike and stab; and that the said *J. M.* with the knife aforesaid, so cast and thrown as aforesaid, did then and there feloniously give unto him the said *A. B.* in and upon the said left side of the body of him the said *A. B.* near the groin, one mortal wound of the breadth of one inch and depth of two inches, of which said mortal wound he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *J. M.* him the said *A. B.* in manner and by the means aforesaid, feloniously did kill and slay, against the peace of our said lord the king, his crown and dignity.—[*Flight—Forfeiture.*] In witness, &c. [*as before.*]

Upon the statute
of stabbing.

That *C. D.* late of the parish aforesaid, in the county aforesaid, labourer, on the day of in the year aforesaid, at the parish and in the county aforesaid, in and upon the said *A. B.* in the peace of God and of our said lord the king then and there being, feloniously and in the fury of his mind, did make an assault. And

that the said *C. D.* with a certain drawn sword, made of iron and steel, of the value of 5 s. which he the said *C. D.* then and there had and held in his right hand, him the said *A. B.* in and upon the left breast of him the said *A. B.* then and there feloniously, and in the fury of his mind, did strike and stab; "he the said *A. B.* then and there "not having any weapon drawn, nor he the said *A. B.* "then having first stricken the said *C. D.*" And that the said *C. D.* with the sword aforesaid, did then and there give unto him the said *A. B.* in and upon the said left breast of him the said *A. B.* one mortal wound, of the breadth of one inch and of the depth of four inches, of which said mortal wound he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.* in manner and by the means aforesaid, feloniously, and in the fury of his mind, did kill and slay, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.— [*Flight—Forfeiture.*] In witness, &c. [*as before.*]

The statute 1 *Jac.* 1. (*h*) only takes away the clergy c. 8. from him who actually stabs; if there be aiders or abettors they can only be found guilty of simple manslaughter, in which case charge them separately from the principal, or jointly with the principal; the precedent is given both ways: in the first case, after the close of the inquisition against the principal, after the word dignity, say thus:

And the jurors aforesaid, upon their oath aforesaid, do further say, that *S. W.* late of the parish and county aforesaid, labourer, and *G. W.* late of the same place, labourer, at the time of the doing and committing of the felony and manslaughter aforesaid, feloniously were present, abetting, aiding, assisting, comforting and maintaining the said *C. D.* to kill and slay the said *A. B.* in manner aforesaid, against the peace of our said lord the king, his crown and dignity.—[*Then conclude with Flight—Forfeiture, &c.*]

Against aiders and abettors.

That *C. D.* late of the parish and county aforesaid, labourer, and *E. F.* late of the same place, labourer, not having the fear of God before their eyes, but moved and seduced by the instigation of the devil, on with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said *A. B.* in the peace of God and of our said sovereign lord the king then and there being, feloniously, wilfully, and of their malice forethought, did make an *assault*. And that the said *C. D.* with a certain

For murder, and also upon the statute of stabbing, with a charge against the principal in the second degree.

(*h*) 1 Hawk. Pl. Cor. 77; but see 9 Geo. 4. c. 34.

Principal in
the second
degree.

That both
committed
the murder.

Flight.

No goods.

On the statute
of stabbing.

drawn sword, made of iron and steel, of the value of 5 s. which he the said *C. D.* then and there had and held in his right hand, him the said *A. B.* into and through the body under the left breast of him the said *A. B.* did then and there feloniously, wilfully, and of his malice forethought, thrust, stab and penetrate; and that the said *C. D.* with the sword aforesaid, by the thrusting, stabbing and penetrating aforesaid, did then and there give unto him the said *A. B.* under the left breast aforesaid, one mortal wound, of which said mortal wound he the said *A. B.* then and there instantly died. And the jurors aforesaid, upon their oath aforesaid, do say that the said *E. F.* at the time of the committing of the felony and murder aforesaid, feloniously, wilfully, and of his malice forethought, was present, abetting, aiding, assisting, comforting and maintaining the said *C. D.* to kill and murder the said *A. B.* in manner aforesaid. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said *C. D.* and *E. F.* him the said *A. B.* in manner and by the means aforesaid, feloniously, wilfully, and of their malice forethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. And that the said *C. D.* after the doing and committing of the felony and murder aforesaid, withdrew and fled for the same; and that at the time of the doing and committing thereof, or at any time since, they the said *C. D.* and *E. F.* nor either of them, had any goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge or notice of the said jurors. And the jurors aforesaid, upon their oath aforesaid, do further say, that the said *C. D.* and *E. F.* on the said day of

in the year aforesaid, at the parish and in the county aforesaid, in and upon the said *A. B.* in the peace of God and of our said sovereign lord the king then and there being, feloniously, and in the fury of their mind, did make an assault. And that the said *C. D.* with a certain drawn sword, made of iron and steel, of the value of 5 s. which he the said *C. D.* then and there had and held in his right hand, him the said *A. B.* into and through the body under the left breast of him the said *A. B.* did then and there feloniously, and in the fury of his mind, thrust, stab and penetrate, he the said *A. B.* then and there not having any weapon drawn, nor then having first stricken the said *C. D.* And that the said *C. D.* with the sword aforesaid, by the thrusting, stabbing, and penetrating aforesaid, did then and there give unto him the said *A. B.* under the left breast aforesaid, one mortal wound, of which said mortal wound he the said *A. B.* then and there in-

stantly died. And that the said *E. F.* at the time of the doing and committing of the felony and manslaughter aforesaid, feloniously, and in the fury of his mind, was present, abetting, aiding, assisting, comforting and maintaining the said *C. D.* to kill and slay the said *A. B.* in manner aforesaid. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said *C. D.* and *E. F.* him the said *A. B.* in manner and by the means aforesaid, feloniously, and in the fury of their mind, did kill and slay, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And that the said *C. D.* after the doing and committing of the felony and manslaughter aforesaid, withdrew and fled for the same; and that at the time of the doing and committing thereof, or at any time since, they the said *C. D.* and *E. F.* nor either of them, had any goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge or notice of the said jurors. In witness, &c. [*as before.*]

Principal in
the second
degree.

That both
killed.

Flight.

No goods.

The *length and depth* of the wound in this last precedent is omitted, because it thereby appears the thrust or wounding was *through* the body.

Se Defendendo.

That on at the parish and in the county aforesaid, the said *A. B.* being in a certain common drinking room, belonging to a public-house there situate, known by the name or sign of in which said common drinking room one *C. D.* of the parish aforesaid, in the county aforesaid, labourer, and also divers other persons, was and were then and there present. And that the said *A. B.* without any cause or provocation whatsoever given by the said *C. D.* did then and there menace and threaten the said *C. D.* to turn him the said *C. D.* out of the said common drinking room, and for that purpose did then and there lay hold of the person of him the said *C. D.* and on him the said *C. D.* in the peace of God and of our said lord the king then and there being, violently did make an assault; and him the said *C. D.* without any cause or provocation whatsoever, did then and there beat, abuse and evilly treat. Whereupon the said *C. D.* for the preservation and safety of his person, and of inevitable necessity, did then and there, with the hands of him the said *C. D.* defend himself against such the violent assault of him the said *A. B.* as it was lawful for him to do. And the said *A. B.* did then and there receive against the will of him the said *C. D.* by the falls and blows which he the said *A. B.* then and there sustained by his the said *C. D.*'s so

By self-defence.

defending himself as aforesaid, divers mortal bruises in and upon the head, back and loins of him the said *A. B.* of which said mortal bruises he the said *A. B.* from the said day of in the year aforesaid, until the of the same month, in the same year, at the parish of in the same county, to wit, in a certain hospital there, called did languish, and languishing did live; on which said day of in the year aforesaid, he the said *A. B.* within the hospital aforesaid, at the parish and in the county aforesaid, of the mortal bruises aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.*, in the defence of himself the said *C. D.*, in manner and by the means aforesaid, did kill and slay; but what goods or chattels the said *C. D.* had at the time of the doing and committing the said manslaughter in his own defence as aforesaid the said jurors know not. In witness, &c.

Se defendendo
in defence of
himself and
property.

An inquisition indented, taken on behalf of our sovereign lord the king, at the parish of in the ward of in the county of before esq. coroner of our said lord the king of the said city, on view of the body of one *D. V.* then and there lying dead, by the oath of, &c. [*naming all the jurors*] good and lawful men of the said city, who being sworn and charged to inquire, for our said lord the king, when, how and by what means the said *D. V.* came to his death, do upon their oath say, that the said *D. V.*, and divers other persons, to the jurors aforesaid as yet unknown, on instant, at the parish of aforesaid, in the county aforesaid, being riotously, tumultuously, seditiously and unlawfully assembled together, in open breach of the public peace, and terror of His Majesty's good subjects, and having violently, tumultuously and unlawfully assaulted and battered the dwelling-house of *R. R.* of the said parish, victualler, with stones, bricks, clubs and other instruments, with intent to demolish and pull down the said house; and having likewise in a riotous, tumultuous and unlawful manner, assaulted the person of the said *R. R.* and other persons, then being in the said house, with stones and bricks, and thereby put both him the said *R. R.*, and the said other persons then in the said house, in great peril and danger of their lives, and he the said *R. R.*, or some other person then in the said house, having caused the proclamation appointed by an act of parliament, made in the the first year of the reign of His late Majesty king *George* the first, intituled, "An act for preventing tumults and riotous assemblies, &c." to be read to them. And

that the said *D. V.* and the other persons unknown, so tumultuously, riotously, seditiously and unlawfully then and there assembled and gathered together, not dispersing themselves according to the tenor of the said proclamation, but riotously, tumultuously, seditiously and unlawfully continuing together, in contempt of the said law, and likewise continuing to assault the said house with stones, bricks, clubs and other instruments, he the said *R. R.*, *in defence of himself*, and for the preservation of his own life, and of the lives of the said several other persons then and there being in the house, and also for preventing the destruction of his house and loss of his goods and chattels, a certain gun called a *blunderbuss*, of the value of 5*s.* charged with gunpowder, and several leaden bullets, at, to and against the said *D. V.*, and the said other persons unknown, so riotously, tumultuously, seditiously and unlawfully then and there assembled together, did discharge and shoot off. And that it so happened that one of the said bullets so shot out of the said blunderbuss by him the said *R. R.* as aforesaid, did give unto him the said *D. V.* one mortal wound in and upon the left side of his body, near the left pap, of the length of one inch and depth of six inches, of which said mortal wound he the said *D. V.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *R. R.* *in defence of himself and property*, him the said *D. V.* in manner and by the means aforesaid did kill. In witness, &c.

Justifiable Homicide.

That the said *T. B.* with a certain other man to the jurors aforesaid at present unknown, on in the year aforesaid, with force and arms, at the parish of in the county aforesaid, in and upon *R. B.* esq. in a certain postchaise and in the king's highway then and there being, feloniously did make an assault; and him the said *R. B.* in bodily fear and danger of his life did then and there put, and a gold watch and some silver monies of the goods, chattels and monies of him the said *R. B.* from the person and against the will of the said *R. B.* in the king's highway aforesaid, then and there feloniously did steal, take and carry away, against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do say, that after the said *T. B.* and the said man unknown, had done and committed the felony and robbery aforesaid, they the said *T. B.* and man unknown, did then and there endeavour to fly and escape for the same; whereupon the said *R. B.* together with *E. H.* and *R. H.* (*state whether coachman, postboy,*

Justifiable
against a street
robber.

or other servant) driving the said chaise, (and at the time of the committing the felony and robbery aforesaid were then and there driving the said postchaise, and forcibly and unlawfully compelled to stand therewith during the committing the same felony and robbery) and also with certain *patrol or other persons* to the said jurors unknown, called in and taken to their assistance, did then and there pursue and endeavour to take and apprehend the said *T. B.* and man unknown, for the doing and committing of the said felony and robbery. And that the said *T. B.* in such pursuit was overtaken by them, to wit, at the parish and in the county aforesaid, and they the said *E. B., E. H. R. H.* and the said persons unknown, did then and there lawfully and peaceably endeavour to take and apprehend the said *T. B.* who was then and there peaceably required to surrender himself, in order to be brought to justice for the same felony and robbery; but the said *T. B.* to prevent his being taken and apprehended, did then and there, with a pistol loaded with gunpowder and a leaden bullet, which he the said *T. B.* then and there had and held in his right hand, menace and threaten to shoot the first man that should attempt to seize him the said *T. B.* and the said *T. B.* did then and there refuse to surrender himself, and did obstinately and unlawfully stand upon his defence in open defiance of the laws of this realm. And that upon such endeavour to take and apprehend the said *T. B.* he the said *T. B.* did then and there discharge and shoot off the said pistol so loaded with gunpowder, and a leaden bullet as aforesaid, at and against him the said *T. B.* And that on the said *T. B.*'s continuing obstinately and unlawfully to resist, and also refusing to surrender himself for public justice, they the said *R. B. E. H. and R. H.,* in order to take and apprehend the said *T. B.* to be brought to justice for the said felony and robbery, and in order to oblige the said *T. B.* to surrender himself for the purposes aforesaid, did then and there, *justifiably and of inevitable necessity,* attack and assault the said *T. B.,* by reason whereof the said *T. B.* did then and there receive, in such his obstinate and unlawful defence, and before he could be taken and apprehended, divers mortal wounds and bruises in and upon his head, breast, belly and left-arm, of which said mortal wounds and bruises he the said *T. B.* at the parish aforesaid, in the county aforesaid, did languish, and languishing did live. And that after the said *T. B.* was so wounded and bruised as aforesaid, he the said *T. B.* was then and there taken and apprehended, and on the day and year last mentioned was lawfully committed to the prison aforesaid, at the said parish of _____ in the county _____

aforesaid, and of such mortal wounds and bruises did then and there also languish, and languishing did live; on which said day of in the year aforesaid, within the prison aforesaid, in the parish and county last mentioned, he the said *T. B.* of the mortal wounds and bruises aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *R. B. E. H.* and *R. H.* him the said *T. B.* in manner and by the means aforesaid, in the pursuit of justice, of *inevitable necessity and justifiably*, did kill and slay. In witness, &c.

Chance Medley.

That *C. D.* late of the parish aforesaid, in the county aforesaid, labourer, on at the parish and in the county aforesaid, a certain gun, of the value of 10*s.* then and there charged with gunpowder and a leaden bullet, which he the said *C. D.* then and there had and held in both his hands, then and there casually and by misfortune, and against the will of him the said *C. D.* was discharged and shot off. And that the said *C. D.* with the leaden bullet aforesaid, then and there discharged and shot out of the said gun, by the force of the gunpowder aforesaid, him the said *A. B.* in and upon the left breast of him the said *A. B.* casually, by misfortune, and against the will of him the said *C. D.* did then and there strike and penetrate, giving unto him the said *A. B.* then and there, with the bullet aforesaid, out of the gun aforesaid so as aforesaid shot off and discharged by the force of the said gunpowder, in and upon the said left breast of him the said *A. B.* one mortal wound, of the breadth of one inch and of the depth of three inches, of which said mortal wound he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *C. D.* him the said *A. B.* in manner and by the means aforesaid, *casually and by misfortune, and against the will* of him the said *C. D.* did kill and slay; but what goods or chattels the said *C. D.* had at the time of the killing and slaying by misfortune as aforesaid the said jurors know not. In witness, &c.

Chance medley
by shooting.

That the said *A. B.* and one *T. T.* on being infants under the age of twelve years, and foremost lads on board of a certain ship called the then lying at her moorings in the river to wit, at in the county of and then and there being in the peace of God and of our said sovereign lord the king, and in friendship, and wantonly and in play struggling together, and then and there both falling to the ground, it so hap-

By a knife.

pened that casually and by misfortune, and against the will of him the said *T. T.* he the said *A. B.* then and there fell upon the point of a certain open clasp-knife, of no value, which he the said *T. T.* then and there had and held in his right-hand, by means of which said falling he the said *A. B.* did then and there casually, by misfortune, and against the will of him the said *T. T.* receive one mortal wound in and upon the right breast of him the said *A. B.*, of the breadth of one inch and depth of three inches, of which said mortal wound he the said *A. B.* from the said day of _____ in the year aforesaid, until the day of _____ in the same year, at aforesaid, in the county of _____ aforesaid, and also at the said parish of _____ in the said county of _____ to wit, in the _____ hospital there, did languish, and languishing did live, on which said _____ day of _____ in the year aforesaid, he the said *A. B.* at the hospital aforesaid, in the parish and county aforesaid, of the mortal wound aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, casually and by misfortune, and against the will of him the said *T. T.* did come to his death, and not otherwise. In witness, &c.

Killing by a Lunatic.

Shooting by
one in a deli-
rium.

That the said *A. B.* "labouring under a grievous disease "of body, to wit, a fever, and by reason of the violence of "the said disease, being delirious and out of his mind," on _____ at the parish and in the county aforesaid, a certain pistol, charged with gunpowder and a leaden bullet, which he the said *A. B.* then and there had and held in his right hand, to and against the head of him the said *A. B.* "*so delirious and out of his mind as aforesaid,*" did then and there shoot off and discharge, by means whereof he the said *A. B.* did then and there give unto himself, "*so delirious and out of his mind aforesaid,*" with the leaden bullet aforesaid, so discharged and shot out of the pistol aforesaid, by the force of the gunpowder aforesaid, in and upon the head of him the said *A. B.* one mortal wound, of the breadth of one inch and depth of four inches, of which said mortal wound he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* "*being "delirious and out of his mind as aforesaid, by reason of the "fever aforesaid,*" in manner and by the means aforesaid, did kill himself. In witness, &c.

If the death be occasioned by any distraction of the mind, and not by disease of the body, instead of the words

above comma'd and printed in italics, you say, "not being
 "of sound mind, memory and understanding, but lunatic
 "and distracted;" and this difference it is necessary to
 remember.

———— That the said *A. B.* "not being of sound
 "mind, memory and understanding, but lunatic and dis-
 "tracted," on from and out of a certain one pair
 of stairs window, then and there being in the chamber or
 apartment of him the said *A. B.* in the dwelling-house of
C. D. situate in street, in the parish and county
 aforesaid, did violently cast and throw himself to the
 ground, to and against the stone-pavement of the yard
 belonging to the said dwelling-house, by means of which
 said casting and throwing he the said *A. B.* did then and
 there receive one mortal wound on the upper part of the
 head of him the said *A. B.* of which said mortal wound he
 the said *A. B.* then and there instantly died. And so the
 jurors aforesaid, upon their oath aforesaid, do say, that the
 said *A. B.* in manner and by the means aforesaid, *not being*
of sound mind, memory and understanding, but lunatic and
distracted, did kill himself. In witness, &c.

Throwing out
 of a window.

That the said *A. B.* "not being of sound mind, memory
 and understanding, but lunatic and distracted," on

Lunatic shoot-
 ing himself.

at the parish and in the county aforesaid, a certain
 pistol charged with gunpowder and a leaden bullet, which
 he the said *A. B.* then and there had and held in his right
 hand, to and against the head of him the said *A. B.* did
 then and there shoot off and discharge, by means whereof
 he the said *A. B.* did then and there give unto himself,
 with the leaden bullet aforesaid, so discharged and shot
 out of the said pistol aforesaid, by the force of the gun-
 powder aforesaid, in and upon the head of him the said
A. B. one mortal wound, of the breadth of one inch and
 of the depth of three inches, of which said mortal wound
 he the said *A. B.* then and there instantly died. And so
 the jurors aforesaid, upon their oath aforesaid, do say,
 that the said *A. B.* "not being of sound mind, memory
 "and understanding, but lunatic and distracted," in man-
 ner and by the means aforesaid, did kill himself. In wit-
 ness, &c.

That the said *A. B.* "labouring under a grievous disease
 "of body, to wit, the stone in the bladder, and by reason
 "of the violence of the said disease being delirious, and out
 "of his mind," on at the parish and in the county
 aforesaid, in the dwelling-house of *C. D.* there situate, with
 a certain razor, made of iron and steel, which he the said
A. B. then and there had and held in his right hand, the

By cutting his
 throat in a
 delirium.

throat or gullet of him the said *A. B.* did then and there strike, stab and penetrate, thereby then and there giving unto himself the said *A. B.* so being delirious and out of his mind as aforesaid, with the razor aforesaid, in and upon the throat or gullet of him the said *A. B.* one mortal wound, of the length of three inches and of the depth of one inch, of which said mortal wound he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* by reason of the disease aforesaid, being delirious and out of his mind as aforesaid, in manner and by the means aforesaid, did kill himself. In witness, &c.

Hanging by
a lunatic.

That the said *A. B.* not being of sound mind, memory and understanding, but lunatic and distracted, on at the parish aforesaid, in the county aforesaid, one end of a certain piece of small cord unto an iron staple fastened into the wainscot, in the lodging-room or apartment of him the said *A. B.* in the dwelling-house of *C. D.* situate and being, in the said parish and county, and the other end thereof about his own neck, did fix, tie and fasten, and therewith did then and there hang, suffocate and strangle himself, of which said hanging, suffocation and strangling he the said *A. B.* then and there died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* not being of sound mind, memory and understanding, but lunatic and distracted, in manner and by the means aforesaid, did kill himself. In witness, &c.

Falling upon
his sword.

That the said *A. P.* not being of sound mind, memory and understanding, but lunatic and distracted, on at the parish and in the county aforesaid, on the drawn sword of him the said *A. P.* in the study of him the said *A. P.* in his own dwelling-house there situate, did cast and throw himself: by means whereof he the said *A. P.* not being of sound mind, memory and understanding, but lunatic and distracted, did then and there give unto himself, by the sword aforesaid, in and upon the belly of him the said *A. P.* near the navel, one mortal wound, of the breadth of one inch and of the depth of six inches, of which mortal wound he the said *A. P.* then and there instantly died. And so the jurors aforesaid, &c. [*as before.*] In witness, &c.

Accidents, Casualties., &c. as well on Land as by Water.

By a cart.

That *W. C.* late of the parish aforesaid, in the county aforesaid, carman, on at the parish and in the county aforesaid, into a certain public street or highway there called the king's highway, being negligently driving

a certain cart drawn by three horses, and loaded with twelve sacks of coals, it so happened that *A. P.* being in the street and highway as aforesaid, was then and there accidentally, casually and by misfortune, forced to the ground by the foremost horse of the said three horses so drawing the said cart, and the said cart so loaded as aforesaid was then and there, by the said horses, violently and forcibly drawn to and against the said *A. P.* and the off-wheel of the said cart so drawn and loaded as aforesaid did then and there, accidentally, casually and by misfortune, violently go upon and pass over the breast and body of the said *A. P.* by means whereof she the said *A. P.* from the weight and pressure of the said cart so loaded and drawn as aforesaid, did then and there receive one mortal bruise in and upon her said breast and body, of which said mortal bruise she the said *A. P.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. P.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to her death, and not otherwise. And that the said cart, horses and loading were the cause of the death of the said *A. P.* and that the said coals are of the value of 30 s. the said cart of the value of 3*l.* and the said three horses of the price of 5*l.* amounting in the whole to the sum of 9*l.* 10 s. of lawful money of Great Britain, and are the property and in the possession of *D. E.* of the parish and county aforesaid, coal merchant, or of his assigns. In witness whereof, &c.

That the said *A. P.* on _____ at the hamlet of _____
in the parish and county aforesaid, being carefully driving
a certain empty cart, drawn by one horse, in a private road
leading into a certain field called or known by the name
of _____ there situate, it so happened that the said
A. P. then and there accidentally, casually and by mis-
fortune, slipped in his feet, and fell to the ground across the
cart-rut then and there being in the said private road, near
unto the near-wheel of the said cart, by reason whereof the
said near-wheel of the said cart did then and there go upon
and pass over the body and breast of him the said *A. P.*
by means whereof he the said *A. P.* did then and there
accidentally, casually and by misfortune, receive one mor-
tal bruise on his said breast, of which said mortal bruise
he the said *A. P.* then and there instantly died. And so
the jurors aforesaid, upon their oath aforesaid, do say, that
the said *A. P.* in manner and by the means aforesaid,
accidentally, casually and by misfortune, came to his death,
and not otherwise. And that the said near-wheel of the
said cart so drawn as aforesaid was moving to the death of

By a cart-
wheel.

the said *A. P.* and is of the value of 10 s. and the property and in the possession of *C. D.* of the parish and county aforesaid, yeoman, or of his assigns. In witness, &c.

Falling into an area.

That the said *A. P.* on at the parish aforesaid, in the county aforesaid, being at work in a certain yard belonging to a house situate in there, at the height of one story from the area of a cellar thereto belonging, and the said *A. P.* then and there stepping upon a stone then and there hanging over the brick-work, it so happened that the said stone, of no value, accidentally, casually and by misfortune, gave way, and fell to the ground, by reason whereof he the said *A. P.* did then and there accidentally, casually and by misfortune, fall from the said yard upon the stone pavement of the said area, and by means thereof did then and there receive, by the fall aforesaid, one mortal bruise and contusion on the crown of his head, of which said mortal bruise and contusion he the said *A. P.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. P.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c.

Drowning by falling into a fit.

That the said *A. B.* on being an in-patient in a certain hospital called situate in the parish and county aforesaid, and under cure there for under which he the said *A. B.* then and there laboured and languished. And the said *A. B.* by the advice and directions of the physicians to the said infirmary, being to dip and wash himself in the bath then and there belonging to the said infirmary, it so happened that the said *A. B.* after such dipping and washing of himself as aforesaid, and as he was then and there near the side of the said bath, he the said *A. B.* was then and there suddenly seized with a violent falling fit, and by reason thereof then and there, accidentally, casually and by misfortune, fell into the said bath, and in the waters thereof was then and there suffocated and drowned, of which said suffocation and drowning he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. In witness, &c.

By the overturning of a chaise.

That the said *A. B.* on at the parish of in the said county of being in a certain chaise there, driving a certain bay gelding, then and there drawing the same, it so happened that the said *A. B.* was then and there casually, accidentally and by misfortune, overturned and violently thrown out of the said chaise to

and against the ground, and by means thereof did then and there receive a mortal fracture in and upon the hinder part of the head of him the said *A. B.* of which said mortal fracture he the said *A. B.* from the said day of in the year aforesaid until the day of in the same year, at the parish and county last mentioned, and also at the parish of in the same county, to wit, in a certain hospital there, called did languish, and languishing did live; on which said day of in the year aforesaid, in the hospital aforesaid, in the said parish last mentioned, and county aforesaid, he the said *A. B.* of the mortal fracture aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. And that the said chaise and horse were moving to the death of the said *A. B.* and that the said chaise is of the value of 5*l.* and the said bay gelding of the price of 10*l.* and remain in the custody of *C. D.* of the parish first mentioned, in the county aforesaid, the executor of the last will and testament of the said *A. B.* whose property they were. In witness, &c.

That on at the parish aforesaid, in the county By a fire. aforesaid, the warehouse of *C. D.* situate in the same parish and county, casually took fire, and the said *A. B.* being then and there present, and aiding and assisting to extinguish the said fire, it so happened that a piece of timber, by the force and violence of the said fire, then and there accidentally, casually and by misfortune, fell from the top of the said warehouse in and upon the head of him the said *A. B.* by reason whereof he the said *A. B.* then and there received a mortal fracture on the head of him the said *A. B.* of which mortal fracture he the said *A. B.* from the said day of in the year aforesaid, until the day of the same month, in the same year, there and also at a certain hospital situate in the parish aforesaid, in the county aforesaid, called the infirmary, did languish, and languishing did live; on which said day of in the year aforesaid, at the hospital aforesaid, in the parish and county aforesaid, he the said *A. B.* of the mortal fracture aforesaid did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise; and that the said piece of timber was the occasion of the death of the said *A. B.* and is of the value of 12*d.*, and the property and in the possession of the said *C. D.* or of his assigns, &c. In witness, &c.

Drowned by
bathing.

That the said *A. B.* on aforesaid, at the parish and in the county aforesaid, to wit, at going into the river *Thames*, there to bathe himself, it so happened that accidentally, casually, and by misfortune, he the said *A. B.* was in the waters of the said river then and there suffocated and drowned; of which said suffocation and drowning he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, accidentally, casually, and by misfortune, came to his death, and not otherwise. In witness, &c.

By being burnt.

That the said *A. B.* being of the age of ninety years, and weak and infirm in body, on being alone in her room or apartment, in a certain alms-house, situate in the parish and county aforesaid, it so happened that she the said *A. B.* as she was then and there sitting by her fire-side, drying of a linen apron, the petticoat of her the said *A. B.* which she the said *A. B.* then and there had on her body, accidentally, casually, and by misfortune, took fire, by reason whereof, and from the smoke and flame arising from the said fire, she the said *A. B.* was then and there suffocated and burnt, of which said suffocation and burning she the said *A. B.* then and there died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to her death, and not otherwise. In witness, &c.

By a difficult
birth and hard
labour.

That the said *A. B.* on at the parish aforesaid, in the county aforesaid, being big with a certain female child, afterwards, to wit, on the same day and year, at the parish and county aforesaid, after a violent and lingering pain and hard labour, with great difficulty did bring forth the said female child alive. And the said *A. B.* from the said day of in the year aforesaid, until the day of the same month, in the same year, at the parish and in the county aforesaid, of the weakness and disorder occasioned by such violent and lingering pain, difficult birth, and hard labour aforesaid, did languish and languishing did live; on which said day of in the year aforesaid, at the parish and in the county aforesaid, she the said *A. B.* of the weakness and disorder aforesaid, occasioned by the hard labour and difficult birth aforesaid, did die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, came to her death, and not otherwise. In witness, &c.

Natural death.

That the said *A. B.* on and for a long time before, at the parish and in the county aforesaid, did labour and lan-

guish under a grievous disease of body, to wit, an asthma ; and that on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, she the said *A. B.* departed this life by the visitation of God in a natural way, to wit, of the disease and distemper aforesaid, and not by any hurt or injury received from any person, to the knowledge of the said jurors. In witness, &c.

That the said *A. B.* on at the parish and in the county aforesaid, to wit, in a certain brickfield there, called was found dead. That he the said *A. B.* for some time before had been very ailing and infirm, and not able to work ; that he had no marks of violence appearing on his body, and departed this life by the visitation of God in a natural way, to wit, of his said ailment and infirmity, and not by any violent means whatsoever, to the knowledge of the said jurors. In witness, &c.

Found dead.

[*As before.*] That the said man unknown, on at the parish and in the county aforesaid, to wit, in a certain wood there, called was found dead. That the said man unknown had no marks of violence appearing on his body ; but how or by what means he came to his death no evidence thereof doth appear to the said jurors. In witness, &c.

Stranger found dead.

That the said *A. B.* on aforesaid, being in an old uninhabited house situate in in the parish and county aforesaid, unlawfully taking away of the timber there, it so happened that the said house then and there sunk and fell in, by reason whereof she the said *A. B.* accidentally, casually and by misfortune, was under the ruins and materials thereof then and there suffocated and smothered, of which said suffocation and smothering she the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by means aforesaid, accidentally, casually and by misfortune, came to her death, and not otherwise. And that the materials of the said house are of the value of 20 *s.* and the property and in the possession of *C. D.* of the parish and county aforesaid, gent. or of his assigns. In witness, &c.

Smothered by the fall of an old house (*a*).

That the said *A. B.* on at the parish and in the county aforesaid, departed this life by excessive drinking, and not from any hurt, injury or violence done or committed by the said *C. D.* or any other person whatsoever, to the knowledge of the said jurors. In witness, &c.

By excessive drinking.

That the said man unknown, on was found dead in a ditch, in a certain lane, situated in the said parish and

Starved to death.

(*a*) *Vid. ex parte Carruthers*, 2 M. & Ry. 397, and *supra*.

there accidentally, casually and by misfortune, thrown out of the said boat into the said river and in the waters thereof was then and there suffocated and drowned, of which said suffocation and drowning he the said *A. B.* then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* in manner and by the means aforesaid, accidentally, casually and by misfortune, came to his death, and not otherwise. And that the said boat was the cause of the death of the said *A. B.* and is of the value of 20 s. and the property and in the possession of the said *C. D.* the said master of the said *A. B.* or of his assigns. In witness, &c.

*To the Minister and Churchwardens of the Parish of
in the County of and to all others
whom these may concern.*

— } Whereas I, with my inquest, the day and year
to wit. } hereunder written, have taken a view of the
body of *J. D.* who, not being of sound mind, memory and
understanding, but lunatic and distracted, shot himself, [*or
agreeably to the finding of the jury,*] who now lies dead in
your parish, and have proceeded therein according to law:
These are therefore to certify that you may lawfully permit
the body of the said *J. D.* to be buried; and for so doing
this shall be your warrant. Given under my hand and
seal, the day of

Warrant to
bury after
a view.

Coroner.

*To the Churchwardens and Constables of the Parish of
in the County of*

— } Whereas by an inquisition taken before me, one
to wit. } of His Majesty's coroners for the said county
of this day of in the
year of the reign of his present Majesty
at the parish of in the said county of
on view of the body of *J. D.*, then and there lying dead;
the jurors in the said inquisition named have found that
the said *J. D.* feloniously, wilfully, and of his malice
forethought, killed and murdered himself [*as the finding
may be*]. These are therefore, by virtue of my office, to
will and require you forthwith to cause the body of the
said *J. D.* to be buried privately in some burial ground, be-
tween the hours of nine and twelve at night, and within
twenty-four hours next following, without any performance
of the rites of Christian burial, according to the statute in
such case made and provided; and thereof to certify me
the place: and for your so doing this is your warrant.
Given under my hand and seal, this day of

Warrant to
bury a *felo de
se* after inquisi-
tion found.

Coroner.

N. B. This is not to be directed to the minister, as no service is to be performed ; it may be directed to constables only.

The return.

By virtue of the within warrant to us directed, we have caused the body within named to be buried in the burial ground of _____ in the said parish [*as the fact may be*].

C. D. {
E. H. { Churchwardens.

I. D. Constable.

To the Ministers and Churchwardens of the Parish of _____ in the County of _____

Warrant to bury without a view, where no effectual inquest can be taken.

_____ } Whereas I am credibly informed, that on the
to wit. } day of _____ the body of a new-born male child was found dead in a coffin, in the churchyard of the parish of _____ in the said county of _____ and that there is not any evidence to be found to make appear to a jury either by what means the said male child was there laid, or who was the mother thereof, or how it came to his death, nor are there any marks of violence appearing on its body. These are therefore to certify, that in ease of the county charge, you may permit the the body of the said new-born male child to be buried ; and for your so doing this is your warrant. Given under my hand and seal, this _____ day of _____

Coroner.

To the Ministers and Churchwardens of the Parish of _____ in the County of _____

Warrant to bury without a view.

_____ } Whereas I am credibly informed, that on the
to wit. } day of _____ instant, *A. B.* died suddenly in the street, to wit, in [*name the street,*] the parish of _____ in the said county, as supposed by a fit of an apoplexy, or other sudden visitation of God ; and that he came not to his death by any violent means or manner whatsoever. These are therefore to certify, that in ease of the county charge, you may permit the body of the said *A. B.* to be buried ; and for your so doing this is your warrant. Given under my hand and seal, this _____ day of _____

Coroner.

To the Ministers and Churchwardens of the Parish of _____ in the County of _____

Warrant to bury without a view where body found drowned.

_____ } Whereas I am credibly informed, that on the
to wit. } day of _____ the body of a man unknown was taken up dead and floating in the river _____ in the parish of _____ in the said county, and that

no marks of violence do appear on the body of the said man unknown; and whereas there is no evidence to make appear to a jury how or by what means the said man unknown came to his death: These are therefore to certify, that in case of the county charge, you may permit the body of the said man unknown to be buried; and for your so doing this is your warrant. Given under my hand and seal, this day of

G. H. Coroner.

To the Ministers, Churchwardens and Overseers of the Parish of in the County of

— } Whereas complaint hath been made unto me, Warrant to
to wit. } one of His Majesty's coroners for the said take up a body
county of that on the day of the body of interred.
one G. R. was privately and secretly buried in your parish, in the said county: and that the said G. R. died not of a natural but violent death: And whereas no notice of the violent death of the said G. R. hath been given to either of His Majesty's coroners for the said county, whereby, on His Majesty's behalf, an inquisition might have been taken on view of the body of the said G. R. before his interment, as by law is required. These are therefore, by virtue of my office, in His Majesty's name, to charge and command you, that you forthwith cause the body of the said G. R. to be taken up, and safely conveyed to the bone-house in the said parish, that I, with my inquest, may have a view thereof, and proceed therein according to law. Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal, the day of
Coroner.

With this warrant the coroner issues his precept to summon a jury in the usual form.

To all Constables and Headboroughs of the Parish of in the County of and to all others His Majesty's Officers of the Peace within the said County.

— } Whereas by an inquisition taken before me, one To apprehend
to wit. } of His Majesty's coroners for the said county a person for
of this day of at the parish of murder.
 in the said county of on view of the
body of G. R., then and there lying dead, one C. D. late of the parish of H. in the said county, stands charged with the wilful murder of the said G. R. These are therefore, by virtue of my office, in His Majesty's name, to charge and command you, and every of you, that you, some or one of you, without delay, do apprehend and bring before

me, the said coroner, or one of His Majesty's justices of the peace of the said county, the body of the said *C. D.* of whom you shall have notice, that he may be dealt with according to law. And for your so doing this is your warrant. Given under my hand and seal, this day of

G. H. Coroner.

To the Constables, Headboroughs, and other His Majesty's Officers of the Peace for the County of and also to the Keeper of His Majesty's Gaol of

Warrant of
commitment to
goal for murder.

— } Whereas by an inquisition taken before me, one
to wit. } of His Majesty's coroners for the said county
of the day and year hereunder mentioned, on
view of the body of *R. L.*, lying dead at the parish of
 in the said county; *I. K.* late of the parish of *C.* in
the said county, labourer, stands charged with the wilful
murder of the said *R. L.* These are therefore, by virtue
of my office, in His Majesty's name, to charge and com-
mand you, or any of you the under-written constables,
headboroughs, and other His Majesty's officers of the
peace for the said county, forthwith safely to convey the
body of the said *I. K.* to His Majesty's gaol of
and safely to deliver the same to the keeper of the said
gaol: and these are likewise, by virtue of my said office,
in His Majesty's name, to will and require you, the said
keeper, to receive the body of the said *I. K.* into your cus-
tody, and him safely to keep in the said gaol until he shall
be thence discharged by due course of law. And for your
so doing this is your warrant. Given under my hand and
seal, the day of

Coroner.

To the Keeper of His Majesty's Gaol of
These

Warrant of
dettainer for
murder.

— } Whereas you have in your custody the body of
to wit. } *C. D.* And whereas by an inquisition taken
before me, one of His Majesty's coroners for the said
county of the day and year hereunder written, at the
parish of in the said county, on view of the body of
A. B. then and there lying dead; he the said *C. D.* stands
charged with the wilful murder of the said *A. B.* These
are therefore, in His Majesty's name, by virtue of my
office, to charge and command you to detain and keep in
your custody the body of the said *C. D.* until he shall be
thence discharged by due course of law. And for your so

doing this is your warrant. Given under my hand and seal, this day of

Coroner.

It is usual for the churchwardens to get a surgeon to attend the coroner; if not, the coroner may issue his summons for that purpose.

To A. P.

——— } Whereas I am credibly informed you can give
to wit. } evidence, on behalf of our sovereign lord the
king, touching the death of *A. P.* now lying dead in the
parish of *C.* in the county of These are therefore,
by virtue of my office, in His Majesty's name, to charge
and command you personally to be and appear before me,
at the dwelling-house of *I. R.*, known by the sign of
in the said parish of *C.* aforesaid, at of the clock in
the evening, on the day of instant, then and
there to give evidence, and be examined, on His Majesty's
behalf, before me and my inquest, touching the premises.
Hereof fail not, as you will answer the contrary at your
peril. Given under my hand and seal, this day

Summons for a
witness to
appear and
give evidence.

Coroner.

*To all Constables, Headboroughs, and other His Majesty's
Officers of the Peace in and for the County of*

———, } Whereas I have received credible information
to wit. } that *A. P.* of the parish of *C.* in the said
county, surgeon, can give evidence, on behalf of our
sovereign lord the king, touching the death of *C. D.* now
lying dead in the said parish of *C.* in the county aforesaid;
and whereas the said *A. P.* (having been duly summoned
to appear and give evidence before me and my inquest,
touching the premises, at the time and place in the said
summons specified, of which oath hath been duly made
before me) hath refused and neglected so to do, to the
great hindrance and delay of justice; these are therefore,
by virtue of my office, in His Majesty's name, to charge
and command you, or one of you, without delay, to ap-
prehend and bring before me, one of His Majesty's
coroners for the said county, now sitting at the parish
aforesaid, by virtue of my said office, the body of the said
C. D. that he may be dealt with according to law. And for
your so doing this is your warrant. Given under my hand
and seal, the day of

Warrant for
contempt
against a wit-
ness for not
appearing to
give evidence.

Coroner.

The coroner may direct this warrant to any one specially, by adding, " And also to *I. D.* my special officer for this purpose."

*To the Constables, Headboroughs, and other His Majesty's Officers of the Peace in and for the county of
and also to the Keeper of the Gaol in the
said County.*

Warrant to
commit a wit-
ness refusing
to give evi-
dence after
being taken for
contempt of
summons.

— } Whereas I heretofore issued my summons,
to wit. } under my hand, directed to *A. P.* of, &c.
surgeon, requiring his personal appearance before me, then
and now one of His Majesty's coroners for the said county
of at the time and place therein mentioned, to give
evidence, and be examined on His Majesty's behalf touching
the death of *C. D.* then and there lying dead ; of the per-
sonal service of which said summons, oath hath been duly
made before me : And whereas the said *A. P.* having neg-
lected and refused to appear, pursuant to the contents of
the said summons, I thereupon afterwards issued my war-
rant, under my hand and seal, in order that the said *A. P.*
by virtue thereof, might be apprehended and brought
before me to answer the premises : And whereas the said
A. P. in pursuance thereof, hath been apprehended and
brought before me, now duly sitting by virtue of my office,
and hath been duly required to give evidence and be
examined before me and my inquest, on His said Majesty's
behalf, touching the death of the said *C. D.*, yet the said
A. P. notwithstanding hath absolutely and wilfully re-
fused, and still doth wilfully and absolutely refuse, to give
evidence and be examined touching the premises, or to
give sufficient reason for his refusal, in wilful and open
violation and delay of justice ; these are therefore, by
virtue of my office, in His Majesty's name, to charge and
command you, or one of you, the said constables, head-
boroughs, and other His Majesty's officers of the peace in
and for the said county of forthwith to convey the
body of the said *A. P.* to the gaol of in the said
county, and safely to deliver the same to the keeper of the
said prison there ; and these are likewise, by virtue of my
said office, in His Majesty's name, to will and require you
the said keeper to receive the body of the said *A. P.* into
your custody, and him safely to keep in the prison, until
he shall consent to give his evidence, and be examined
before me and my inquest, on His Majesty's behalf, touching
the death of the said *C. D.*, or until he shall be from thence
otherwise discharged by due course of law. And for your

so doing this is your warrant. Given under my hand and seal, this day of

Coroner.

To the Constables, Headboroughs, and others His Majesty's Officers of the Peace in and for the County of and also to the Keeper of the Gaol in the said County.

— } Whereas *A. B.* of, &c. surgeon, is a material
to wit. } witness on the behalf of our sovereign lord the
king against *I. P.* late of the parish aforesaid, in the county
aforesaid, labourer, now charged before me, one of His
Majesty's coroners for the county of and my inquest,
with the wilful murder of *C. D.* there now lying dead; and
whereas the said *A. B.* at this time of my inquiry, (on view
of the body of the said *C. D.* how and by what means he
the said *C. D.* came by his death,) hath personally appeared
before me and my said inquest, and on His Majesty's
behalf hath given evidence and information on oath touch-
ing the premises; which said information having by me
been reduced into writing, and the contents thereof by
me, in the presence of the said inquest, openly and truly
read to him the said *A. B.* who doth acknowledge the same
to be true, and that the same doth contain the full sub-
stance and effect of the evidence by him given before me
to my said inquest; and the said *A. B.* having by me been
requested and desired to sign and set his hand to his said
testimony and information, and to acknowledge the same
as by law is required, yet notwithstanding the said *A. B.*
hath wilfully and absolutely refused, and still doth wilfully
and absolutely refuse so to do, in open defiance of law, and
to the great hindrance of the public justice: These are there-
fore, by virtue of my office, in His Majesty's name, to
charge and command you, or one of you, the said constables
and headboroughs, and others His Majesty's officers of the
peace in and for the said county of forthwith to
convey the body of the said *A. B.* to the gaol of
in the said county, and safely to deliver the same to the
keeper of the said prison there; and these are likewise, by
virtue of my said office, in His Majesty's name, to will and
require you the said keeper to receive the body of the said
A. B. into your custody, and him safely to keep in prison
until he shall duly sign and acknowledge his said informa-
tion, or shall be from thence otherwise discharged by due
course of law. And for your so doing this is your warrant.
Given under my hand and seal, this day of

Warrant of
commitment
of a witness
refusing to sign
his information.

Coroner.

To the Constables, Headboroughs, and others His Majesty's Officers of the Peace in and for the County of _____ and also to the Keeper of the Gaol at in the said County.

Warrant to
commit a
witness who
refuses to enter
into a recog-
nizance to
appear and give
evidence at the
sessions.

_____ } Whereas upon an inquisition this day taken
to wit. } before me, one of His Majesty's coroners for
the county of _____ at the parish of *A.* in the said
county, on view of the body of *C. D.* then and there lying
dead, one *I. U.* late of the parish aforesaid, in the county
aforesaid, labourer, was by my inquest then and there sit-
ting found guilty of the wilful murder of the said *C. D.*
And whereas one *U. P.* of the parish and county aforesaid,
silversmith, was then and there examined, and gave infor-
mation in writing, before me and my inquest, touching the
premises, and which said information he the said *U. P.*
then and there before me and my inquest duly signed and
acknowledged, and by which said information it appears
that the said *U. P.* is a material evidence on His Majesty's
behalf against the said *I. U.* now in custody, and charged
by my inquest with the said murder; and the said *U. P.*
having wilfully and absolutely refused to enter into the
usual recognizance for his personal appearance at _____ in
and for the said _____ at the next session of gaol deli-
very to be holden for the said county of _____ at
and then and there to give evidence on His Majesty's
behalf against the said *I. U.*, to the great hindrance and
delay of justice: These are therefore, by virtue of my
office, in His Majesty's name, to charge and command you,
or one of you, the said constables and headboroughs, and
others His Majesty's officers of the peace in and for the
said county, forthwith to convey the body of the said *U. P.*
into your custody, and him safely to keep in the said pri-
son until he shall enter into such recognizance before me,
or before one of His Majesty's justices of the peace for the
said county, for the purpose aforesaid, or in default thereof,
until he shall be from thence otherwise discharged by due
course of law. And for so doing this is your warrant.
Given under my hand and seal this _____ day of _____

Coroner.

_____ } BE IT REMEMBERED, That *I. R.* of &c. yeo-
to wit. } man, and *E. D.* of the same place, dyer, Do
severally acknowledge to owe to our sovereign lord the king
the sum of forty pounds each of lawful money of Great
Britain, to be levied on their several goods and chat-
tels, lands and tenements, by way of recognizance, to His

Majesty's use, in case default shall happen to be made in the condition hereunder written :

The condition of this recognizance is such, that if the above-bounden *I. R.* and *E. D.* do severally personally appear at the next session of the peace to be holden at in and for the county of and the said *I. R.* shall then and there prefer, or cause to be preferred, to the grand jury, a bill of indictment against *C. D.* late of the said parish and county, labourer, and now in custody for the wilful murder of *A. B.* late of &c. and that the said *I. R.* and *E. D.* do then and there severally personally appear to give evidence on such bill of indictment to the said grand jury; and in case the said bill of indictment be found by the grand jury a true bill, that then they the said *I. R.* and *E. D.* do severally personally appear at the next session of gaol-delivery to be holden for the said county of at And the said *I. R.* shall then and there prosecute, or cause to be prosecuted, the said *C. D.* on such indictment: And the said *I. R.* and *E. D.* do then and there severally give evidence to the jury that shall pass on the trial of the said *C. D.* touching the premises: And in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at the said session of gaol-delivery to be then and there holden for the said county, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said *C. D.* upon an inquisition taken before me, one of His Majesty's coroners for the said county of on view of the body of the said *A. B.* and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged this day of
Before me, Coroner.

I. R. }
E. D. }

Recognizance
to appear at
the sessions to
find a bill,
and prosecute.
To be taken
on parchment
without stamp,
and returned
to the sessions.

If a wife be to give evidence, and the husband be not present to enter into a recognizance, the wife is not to be bound in any sum penal, but *on pain of* imprisonment, as thus: *S.* the wife of *J. S.* of, &c. labourer, on pain of imprisonment, in case she shall make default in such condition; and insert her name in such condition.

If the husband be present, he is to be bound for the appearance of his wife: in this case insert the wife's name throughout the condition of the recognizance.

If it happen an apprentice or an infant be to give evidence, the parent or master is bound in a recognizance for the appearance; and in this case the parent or master is called the *mainpernor* of the infant or apprentice, and the condition will be for the infant or apprentice to appear; for which see the following general precedent:

Recognizance
by husband for
wife's appear-
ance, and by
master, &c.
for appren-
tice's appear-
ance.

Middlesex:

- J. P.* of the parish of _____ in the said county
blacksmith;
T. P. of the same parish, victualler;
J. R. of the same parish, whitesmith, the husband of
S. R.;
J. B. of the same parish, haberdasher, the mainpernor of
J. J., his apprentice, an infant;
J. S. of the same parish, sword-cutler, the mainpernor
of *G. S.*, his son, an infant: Do severally acknowledge
to owe to our sovereign lord the king the sum of
40*l.* of lawful money of *Great Britain*, to be levied
on their several goods and chattels, lands and tene-
ments, by way of recognizance, to His Majesty's use,
in case default shall be made in the condition follow-
ing:

And *S.* the wife of *J. P.*, of the same parish, buckle-
maker, on pain of imprisonment, in case she shall
make default in such condition.

The condition.

The condition of this recognizance is such, that if the
above-bounden *J. P.*, *T. P.*, *S. R.*, the wife of the said
J. R., *J. J.*, *G. S.*, and *S. P.* do severally personally ap-
pear at the next sessions of the peace to be holden at
_____ in and for the county of *Middlesex*, and then
and there give evidence on a bill of indictment to be pre-
ferred to the grand jury against *W. T.* now at large, for
the wilful murder of *S.* his wife; and in case the said bill
of indictment shall be returned by the grand jury a true
bill, then that they do severally personally appear, at the
session of gaol-delivery to be holden for the said county of
Middlesex, at *Justice Hall* in the *Old Bailey, London*, next
after the apprehending or surrender of the said *W. T.* and
then and there severally give evidence to the jury that
shall pass on the trial of the said *W. T.* touching the pre-
mises; and in case the said bill of indictment shall be
returned by the grand jury not found, that then they
do severally personally appear at such session of gaol deli-
very to be then and there holden for the said county, and
then and there give evidence to the jury that shall pass
upon the trial of the said *W. T.* upon an inquisition taken

before me, one of His Majesty's coroners for the said county of *Middlesex*, on view of the body of the said *S. T.* and not depart the court without leave; then this recognizance to be void, otherwise to be and remain in full force.

Taken and acknowledged this day of
Coroner.

<p>_____ } to wit. } <i>C. D.</i> at the parish of <i>C.</i> in the said county of bearing date the day of instant, the jurors in the said inquisition named have found that <i>A. B.</i> justifiably, and of inevitable necessity, did kill and slay the said <i>C. D.</i> Given under my hand this day of Coroner.</p>	<p>These are to certify, that by an inquisition taken before me, on view of the body of jurors in offences of the less degree, in order for bail before justices of the peace.</p>
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Or, in defence of himself, and for the safety of his life and property, as against thieves, justifiably, &c.

Or, casually and by misfortune, and against the will of the said *A. B.* (*as in a chance medley.*)

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ESCAPE WARRANT.

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A man condemned for felony, and imprisoned in Newgate on the <i>Middlesex</i> side, after a writ of execution for debt issues, directed to the sheriffs of <i>London</i> , who serve it, afterwards he was pardoned; held that such service of the execution was unlawful, because he was on the <i>Middlesex</i> side	-	-	-	-	-	-	-	-	29
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